



DIESEL FUEL TAX LAW

CONTENTS

	<i>Page</i>
DIESEL FUEL TAX LAW	6613
CHAPTER 1 GENERAL PROVISIONS AND DEFINITIONS.....	6613
Section 60001 Title	6614
60003 “Terminal”	6614
60003.1. “Fuel production facility”	6614
60004 “Refinery”	6614
60005 “Approved”	6614
60006 “Rack”	6614
60007 “Removal”	6614
60008 “Person”	6614
60009 “Terminal operator”	6614
60010 “Position holder”	6614
60011 “Refiner”	6615
60012 “Blender”	6615
60013 “Enterer”	6615
60015 “Diesel fuel registrant”	6615
60016 “Highway”	6615
60017 “In this state”	6615
60018 “Fuel tank”	6615
60019 “Motor vehicle”	6615
60021 “Entry”	6615
60022 “Diesel fuel”	6616
60023 “Blended diesel fuel”	6617
60024 “Colorless marker”	6617
60025 “Gallon”	6617
60026 “Diesel-powered highway vehicle”	6618
60027 “Qualified highway vehicle operator”	6618
60029 “Bulk transfer”	6618
60030 “Bulk transfer/terminal system”	6618
60031 “Dyed diesel fuel”	6618
60032 “Undyed diesel fuel”	6618
60033 “Supplier”	6618
60034 “Highway vehicle operator/fueler”	6618
60035 “Throughputter”	6619
60036 “Ultimate vendor”	6619
60037 “Ultimate purchaser”	6619
60038 “Registered ultimate vendor”	6619
60039 “Exempt bus operation”	6619
60040 “Exempt bus operator”	6620
60041 “Train operator”	6620
60042 “Diesel-powered train”	6620
60043 “Government entity”	6620
60044 “Retail vendor”	6621

		CONTENTS (Contd.)	<i>Page</i>
	60047	“Pipeline”	6621
	60047.1	“Pipeline operator”	6621
	60048	“Sale”	6621
	60048.1	“Tax-paid fuel”	6621
	60049	“Vessel”	6621
	60049.1	“Vessel operator”	6621
CHAPTER	2	IMPOSITION OF TAX	6621
Section	60050	Levy of tax	6622
	60050.1	Floor stock tax	6622
	60051	Levy of tax; rack removal	6622
	60052	Levy of tax; other	6623
	60053	Refiner liability	6623
	60054	Position holder liability	6623
	60055	Blender liability	6623
	60056	Qualified highway vehicle operator liability	6623
	60057	Highway vehicle operator/fueler liability....	6623
	60058	Backup tax	6623
	60059	Terminal operator liability	6624
	60060	Terminal operator exclusion	6624
	60061	Enterer liability	6624
	60062	Terminal operator joint liability	6624
	60063	Two-party exchange	6624
	60064	Presumption of removal	6625
CHAPTER	3	EXEMPTIONS	6626
Section	60100	Exemptions	6626
	60101	Dyed fuel exemption	6627
	60102	Dyed fuel notice	6628
	60103	Form of notice	6628
	60105	Dyed diesel fuel penalties	6628
	60106	Train operator exemption	6629
	60106.1	Train operator; exemption certificate	6629
	60106.2	Exemption certificate; purchaser liability ...	6629
	60106.3	Misuse of exemption certificate	6629
	60107	Train operator report	6630
	60108	Government entity payment	6630
CHAPTER	4	INTERSTATE USERS	6631
Article	1	Definitions	6631
Section	60110	Construction	6631
	60111	“Interstate user”	6631
	60112	“Qualified motor vehicle”	6631

CONTENTS (Contd.)			<i>Page</i>
	60113	“Recreational vehicle”	6631
	60114	“Diesel vendor”	6631
Article	2	Imposition of Tax.....	6632
Section	60115	Levy of tax.....	6632
	60116	Interstate user component b rate	6632
Article	3	Licenses for Interstate Users	6632
Section	60120	To whom issued.....	6632
	60121	Security requirement.....	6633
	60122	Diesel fuel trip permit	6633
Article	4	Administrative Provisions.....	6633
Section	60128	Administration	6633
CHAPTER	4.5	INTERNATIONAL FUEL TAX AGREEMENT	6633
Section	60130	Effective date	6633
CHAPTER	5	LICENSES.....	6634
Article	1	Licenses for Suppliers	6634
Section	60131	Supplier license.....	6634
	60132	Applications	6634
	60133	Security requirement.....	6634
	60135	Pipeline operator license.....	6634
Article	2	License for Exempt Bus Operator.....	6634
Section	60141	Exempt bus operator license.....	6635
	60142	Application	6635
	60143	Security requirement.....	6635
Article	2.5	License for Government Entity	6635
Section	60146	Government entity license.....	6635
Article	3	License for Ultimate Vendor	6635
Section	60151	Ultimate vendor license.....	6635
	60152	Application	6635
	60153	Requirements	6635
Article	4	License for Qualified Highway Vehicle Operator.....	6635
Section	60161	Qualified highway vehicle operator license	6636
	60162	Application	6636
	60163	Security requirement.....	6636
Article	5	Denial of License.....	6636
Section	60171	Grounds for denial.....	6636
	60172	Right to hearing	6636
	60173	Notice of denial	6636
Article	6	Revocation of License	6637
Section	60180	Grounds for revocation.....	6637

CONTENTS (Contd.)

		<i>Page</i>
	60181	Grounds for revocation; cause..... 6637
	60182	Notice of revocation 6637
	60183	Cancellation of license 6638
	60184	Tax liability upon revocation..... 6638
	60185	Reinstatement 6638
	60186	Unlawful operation after revocation..... 6638
Article	7	Licensing of Locations 6638
Section	60190	Requirement to disclose multiple locations..... 6638
CHAPTER	6	DETERMINATIONS AND PAYMENTS 6638
Article	1	Returns and Payments 6638
Section	60201	Return 6639
	60201.1	Return; floor stock tax..... 6639
	60201.2	Purchaser's election to delay payment to supplier 6639
	60201.3	Worthless accounts; supplier 6640
	60202	Return; interstate user..... 6640
	60204	Report; terminal operator 6641
	60204.5	Report; pipeline operator and vessel operator..... 6642
	60204.6	Report; train operator 6643
	60205	Return; exempt bus operator 6643
	60205.5	Return; government entity 6643
	60206	Return; qualified highway vehicle operator..... 6644
	60207	Penalty 6644
	60208	Extension of time..... 6644
	60209	Excusable delay 6645
	60210	Excusable delay; reliance on Board advice..... 6645
	60210.5	Relief of spouse 6646
	60211	Disaster 6647
	60212	Relief of interest 6647
Article	1.1	Payment by Electronic Funds Transfer 6648
Section	60250	Electronic funds transfer payments 6648
	60251	Relief of penalty 6649
	60252	Definitions 6649
	60253	Electronic filing 6650
Article	2	Determination If No Return Made 6650
Section	60301	Determination; failure to file return; penalty 6650
	60302	Interest 6650

CONTENTS (Contd.)			<i>Page</i>
	60303	Fraud penalty	6650
	60304	Notice of determination.....	6651
Article	3	Deficiency Determinations	6651
Section	60310	Deficiency determination.....	6651
	60311	Notice of determination.....	6651
	60312	Negligence	6651
	60313	Fraud	6651
	60314	Interest	6652
	60315	Limitations; deficiency determinations	6652
	60316	Limitations; deficiency determinations; decedents	6652
	60317	Waiver	6652
Article	4	Jeopardy Determinations and Weekly Payments.....	6652
Section	60330	Jeopardy determination.....	6652
	60331	Interest and penalty.....	6652
	60332	Petition for redetermination; security.....	6653
	60333	Administrative hearing	6653
	60334	Weekly returns	6653
	60335	Monthly return period.....	6654
	60336	Revocation of license.....	6654
	60337	Immediately due and payable.....	6654
	60338	Penalty	6654
	60339	Interest	6654
	60340	Service of notice.....	6654
Article	5	Redeterminations	6655
Section	60350	Petition for redetermination.....	6655
	60351	Form and content	6655
	60352	Oral hearing	6655
	60353	Decrease or increase of determination	6655
	60354	Finality date of order or decision	6655
	60355	Due date; penalty	6655
	60356	Offsets	6655
Article	6	Payment by Unlicensed Persons.....	6656
Section	60360	Immediate liability for tax.....	6656
	60361	Penalty	6656
	60361.5	Immediate liability for backup tax	6657
	60362	Seizure and sale of property	6657
	60363	Attorney General action	6658
	60364	Copy of determination.....	6658
	60365	Cumulative remedies	6658
	60366	Applicable penal provisions	6658

CONTENTS (Contd.)

			<i>Page</i>
CHAPTER	7	COLLECTION OF TAX.....	6658
Article	1	Security for Tax	6658
Section	60401	Security	6658
	60402	Notice to creditors	6659
	60403	Withholds; prohibitions against transfer or disposal	6659
	60404	Withholds; banks	6659
	60405	Withholds; liability	6659
	60406	Effect of security when business discontinues	6660
	60407	Notice of levy	6661
	60408	Withholds; earnings	6662
Article	2	Suit for Tax	6663
Section	60421	Legal actions to collect deficiencies.....	6663
	60422	Attachment.....	6663
	60423	Prima facie evidence.....	6663
Article	3	Lien of Tax.....	6663
Section	60441	Lien	6664
	60442	Time of attachment.....	6664
	60443	Removal of lien	6664
	60444	Priority	6664
	60445	Liens; perfection and enforceability of	6664
Article	4	Warrant for Collection of Tax	6664
Section	60451	Warrant; time of issuing	6664
	60452	Fees and expenses.....	6665
	60453	Collection of fees.....	6665
Article	5	Seizure and Sale	6665
Section	60461	Seizure and sale	6665
	60462	Notice of sale.....	6665
	60462.5	Seizure and sale; qualified motor vehicle ...	6666
	60462.6	Notice of sale; qualified motor vehicle	6666
	60463	Conduct of sale.....	6666
	60464	Disposition of proceeds	6666
Article	6	Successor Withholding and Liability	6667
Section	60471	Successor withholding.....	6667
	60472	Successor liability; certificate of tax clearance	6667
	60473	Certificate of tax clearance.....	6667
	60474	Notice of successor liability	6667
Article	7	Miscellaneous Provisions	6668
Section	60491	Remedies.....	6668
	60492	Furnishing of partnership agreement.....	6668

CONTENTS (Contd.)			<i>Page</i>
	60493	Installment payment agreement.....	6668
	60493.5	Installment payment annual statement	6669
CHAPTER	8	OVERPAYMENTS AND REFUNDS	6669
Article	1	Refunds on Certain Sales and Uses.....	6669
Section	60501	Overpayments; credits and refunds	6669
	60502	Refund; ultimate vendor	6672
	60502.1	Prohibition of tax reimbursement.....	6672
	60502.2	Tax; exempt bus operators	6673
	60503	Form of exemption certificate	6673
	60503.1	Misuse of exemption certificate	6673
	60503.2	Punishments	6673
	60504	Trace amounts of dyed fuel	6674
	60505	Refund.....	6674
	60505.5	Refund; electronic media.....	6674
	60506	Examination of books and records	6674
	60507	Claim; limitation period	6674
	60508	Credit allowed on supplier's return	6675
	60508.3	Credit; government entity	6675
	60511	Interest	6675
	60512	Claim payment deadline	6676
Article	2	Claim for Refund.....	6676
Section	60521	Credits and refunds.....	6676
	60521.5	Excess tax reimbursement	6676
	60522	Credits and refunds; claim; limitation periods	6677
	60522.1	Claim limitation; financially disabled	6677
	60522.2	Overpayments from levies or liens.....	6678
	60523	Form and content of claim	6678
	60524	Interest	6678
	60525	Disallowance of interest	6678
Article	3	Suit for Refund.....	6678
Section	60541	Enjoining collection forbidden.....	6679
	60542	Necessity of refund claim.....	6679
	60543	Action for refund; limitation	6679
	60544	Refund claim not acted on.....	6679
	60545	Failure to bring timely suit.....	6679

CONTENTS (Contd.)

		<i>Page</i>
	60546	Credit or refund 6679
	60547	Interest 6679
	60548	Judgment for assignee forbidden..... 6679
Article	4	Recovery of Erroneous Refunds..... 6680
Section	60561	Erroneous refunds; action..... 6680
	60562	Place of trial..... 6680
	60563	Rules of procedure, etc..... 6680
	60564	Interest on erroneous refunds 6680
Article	5	Cancellations..... 6681
Section	60581	Cancellation of determination; procedure 6681
CHAPTER	9	ADMINISTRATION..... 6681
Article	1	Administration 6681
Section	60601	Duty and authority of board 6681
	60602	Hiring of employees 6681
	60603	Inspections by board..... 6681
	60604	Records 6682
	60605	Information to retain..... 6682
	60606	Examination of books and records by board..... 6683
	60607	Conferences as part of administrative duties..... 6683
	60608	Information sharing 6683
	60609	Information confidential; divulging forbidden..... 6684
	60609.5	Information confidential; tax preparer 6684
	60610	Certificate of notice 6685
Article	2	The California Taxpayers' Bill of Rights 6685
Section	60621	Administration 6685
	60622	Taxpayers' Rights Advocate 6685
	60623	Education and information program 6686
	60624	Annual hearing with taxpayers..... 6686
	60625	Preparation of statements by board..... 6686
	60626	Restriction on use of revenue collected or assessed information 6686
	60627	Evaluation of employee's contact with taxpayers..... 6687
	60628	Plan to timely resolve claims and petitions 6687
	60629	Procedures relating to protest hearings 6687
	60630	Reimbursement of fees and expenses..... 6687

CONTENTS (Contd.)

		<i>Page</i>
	60631	Investigations for nontax administration purposes..... 6688
	60632	Release of levy 6688
	60632.1	Return of property 6689
	60633	Exemptions from levy 6689
	60633.1	Claim for reimbursement of bank charges by taxpayer..... 6689
	60633.2	Preliminary notice to taxpayers prior to lien 6690
	60634	Notice preliminary to revocation or suspension..... 6690
	60635	Disregard by board employee or officer 6691
	60636	Settlement authority..... 6691
	60637	Offers in compromise 6693
CHAPTER	10	DISTRIBUTION OF PROCEEDS 6700
Section	60651	Motor Vehicle Fuel Account transmittals.... 6700
	60652	Disposition of funds; appropriation..... 6700
	60653	Transfer of funds to Highway Users Tax Fund..... 6700
	60654	Appropriation to board 6700
CHAPTER	11	VIOLATIONS..... 6700
Section	60701	Penalty for fraudulent export statement 6701
	60702	Penalties..... 6701
	60703	Imported fuel 6701
	60704	False or fraudulent refund claim; penalty ... 6701
	60705	False or fraudulent return; intent to evade..... 6701
	60706	Other violations 6702
	60706.1	Additional fine 6702
	60707	Felony provisions..... 6702
	60707.1	Additional felony fine..... 6702
	60708	Limitation period 6703
Uncodified Section		
	1	Further analysis by Board 6703
PART	3.5	FUEL TAX AGREEMENTS
CHAPTER	1	FUEL TAX AGREEMENTS..... 6705
Section	9401	Authorization 6705
CHAPTER	2	THE INTERNATIONAL FUEL TAX AGREEMENT 6705
Article	1	Construction..... 6705
Section	9405	Construction..... 6705
	9407	Limits of authority..... 6706

CONTENTS (Contd.)

	<i>Page</i>
Article 2	Definitions 6706
Section 9410	“Contractor” 6706
9411	“IFTA” 6706
Article 3	Annual Fees 6706
Section 9420	License and fee 6706
Article 4	Administration 6707
Section 9425	Returns and refunds 6707
Article 5	IFTA Disclosure 6707
Section 9430	Release of information 6707
Article 6	Distribution of Proceeds 6707
Section 9432	Distribution of funds 6707
9433	Uses of funds 6708
INDEX	6709
TABLE OF CASES	6717

DIESEL FUEL TAX LAW

(Part 31, Division 2, Revenue and Taxation Code)

(As added by Chapter 912, effective September 28, 1994, but operative July 1, 1995.)

- Chapter 1. General Provisions and Definitions. §§ 60001-60049.1.
 2. Imposition of Tax. §§ 60050-60064.
 3. Exemptions. §§ 60100-60108.
 4. Interstate Users. §§ 60110-60128.
 4.5. International Fuel Tax Agreement. § 60130.
 5. Licenses. §§ 60131-60190.
 6. Determinations and Payments. §§ 60201-60366.
 7. Collection of Tax. §§ 60401-60493.5.
 8. Overpayments and Refunds. §§ 60501-60581.
 9. Administration. §§ 60601-60637.
 10. Distribution of Proceeds. §§ 60651-60654.
 11. Violations. §§ 60701-60708.

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- § 60001. Title.
 § 60003. "Terminal."
§ 60003.1. "Fuel production facility."
 § 60004. "Refinery."
 § 60005. "Approved."
 § 60006. "Rack."
 § 60007. "Removal."
 § 60008. "Person."
 § 60009. "Terminal operator."
 § 60010. "Position holder."
 § 60011. "Refiner."
 § 60012. "Blender."
 § 60013. "Enterer."
 § 60015. "Diesel fuel registrant."
 § 60016. "Highway."
 § 60017. "In this state."
 § 60018. "Fuel tank."
 § 60019. "Motor vehicle."
 § 60021. "Entry."
 § 60022. "Diesel fuel."
 § 60023. "Blended diesel fuel."
 § 60024. "Colorless marker."
 § 60025. "Delivery." [Repealed.]
 § 70025. "Gallon."
 § 60026. "Diesel-powered highway vehicle."
 § 60027. "Qualified highway vehicle operator."
 § 60029. "Bulk transfer."
 § 60030. "Bulk transfer/terminal system."
 § 60031. "Dyed diesel fuel."
 § 60032. "Undyed diesel fuel."
 § 60033. "Supplier."
 § 60034. "Highway vehicle operator/fueler."
 § 60035. "Throughputter."
 § 60036. "Ultimate vendor."
 § 60037. "Ultimate purchaser."
 § 60038. "Registered ultimate vendor."
 § 60039. "Exempt bus operation."
 § 60040. "Exempt bus operator."
 § 60041. "Train operator."
 § 60042. "Diesel-powered train."
 § 60043. "Government entity."
 § 60044. "Retail vendor."

- § 60045. “Intercity bus.” [Repealed.]
- § 60046. “Intercity bus operator.” [Repealed.]
- § 60047. “Pipeline.”
- § 60047.1. “Pipeline operator.”
- § 60048. “Sale.”
- § 60048.1. “Tax-paid fuel.”
- § 60049. “Vessel.”
- § 60049.1. “Vessel operator.”

60001. **Title.** This part is known and may be cited as the “Diesel Fuel Tax Law.”

60003. **“Terminal.”** “Terminal” means a diesel fuel storage and distribution facility that is supplied by pipeline or vessel, and from which diesel fuel may be removed at a rack. “Terminal” includes a fuel production facility where diesel fuel is produced and stored and from which diesel fuel may be removed at a rack.

History.—Stats. 2009, Ch. 545 (AB 1547), in effect January 1, 2010, added second sentence.

60003.1. **“Fuel production facility.”** “Fuel production facility” means a facility, other than a refinery, in which diesel fuel is produced.

History.—Added by Stats. 2009, Ch. 545 (AB 1547), in effect January 1, 2010.

60004. **“Refinery.”** “Refinery” means a facility used to produce diesel fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which diesel fuel may be removed by pipeline, by vessel, or at a rack.

60005. **“Approved.”** “Approved terminal or refinery” means a terminal or refinery that is operated, respectively, by a diesel fuel registrant that is a terminal operator, or by a diesel fuel registrant that is a refiner.

60006. **“Rack.”** “Rack” means a mechanism for delivering diesel fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

60007. **“Removal.”** “Removal” means any physical transfer of diesel fuel, and any use of diesel fuel other than as a material in the production of diesel fuel. However, diesel fuel is not removed when it evaporates or is otherwise lost or destroyed.

60008. **“Person.”** “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city and county, municipality, district, or other political subdivision thereof, or any other group or combination acting as a unit.

History.—Stats. 1995, Ch. 2, in effect April 29, 1995, and Ch. 34, in effect June 30, 1995, but operative July 1, 1995, added “limited liability company,” after “joint venture.”; Stats. 1995, Ch. 497, in effect January 1, 1996, substituted “partnership” for “copartnership” after “any individual, firm,” and deleted “the United States.” after “trust, receiver, syndicate.”

60009. **“Terminal operator.”** “Terminal operator” includes any person that owns, operates, or otherwise controls a terminal.

60010. **“Position holder.”** “Position holder” includes any person that holds the inventory position in the diesel fuel, as reflected on the records of the terminal operator. A person holds the inventory position in diesel fuel when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the diesel fuel. “Position holder” includes a terminal operator that owns diesel fuel in its terminal.

60011. **“Refiner.”** “Refiner” includes any person that owns, operates, or otherwise controls a refinery.

Text of section operative through December 31, 2001

60012. **“Blender.”** “Blender” includes any person that produces blended diesel fuel outside the bulk transfer/terminal system.

Text of section operative January 1, 2002

60012. **“Blender.”** “Blender” includes any person that produces or converts blended diesel fuel outside the bulk transfer/terminal system.

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, added “or converts” after “person that produces”.

60013. **“Enterer.”** “Enterer” includes any person who is the importer of record (under federal customs law) with respect to diesel fuel. If the importer of record is acting as an agent, the person for whom the agent is acting is the enterer. If there is no importer of record of diesel fuel entered into this state, the owner of the diesel fuel at the time it is brought into this state is the enterer.

60015. **“Diesel fuel registrant.”** “Diesel fuel registrant” includes any enterer, position holder, refiner, throughputter, or terminal operator, that is licensed as a supplier pursuant to Section 60131.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added “throughputter,” after “position holder, refiner.”

60016. **“Highway.”** “Highway” includes any way or place, of whatever nature, that is publicly maintained and open to the use of the public for purposes of vehicular travel.

60017. **“In this state.”** “In this state” or “in the state” means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States.

60018. **“Fuel tank.”** “Fuel tank” means any receptacle on a motor vehicle from which fuel is supplied for the operation of the motor vehicle.

60019. **“Motor vehicle.”** “Motor vehicle” includes every self-propelled vehicle operated or suitable for operation on the highway, except a vehicle used exclusively upon stationary rails or tracks.

60021. **“Entry.”** “Entry” means the importing of diesel fuel into this state. However, diesel fuel brought into this state in the fuel tank of a motor vehicle shall not be deemed to be an “entry” if not removed from the fuel tank except as used for the operation of that motor vehicle, except to the extent that diesel fuel was acquired tax free for export or a refund of tax was claimed as a result of exportation from the state from which that diesel fuel was transported into this state.

Text of section operative through December 31, 2006

60022. **“Diesel fuel.”** (a) “Diesel fuel” means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in

a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle.

However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

(b) “Diesel fuel” does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(c) “Diesel fuel” does not include the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board.

(d) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

History.—Stats. 2001, Ch. 8 of the 2nd Extraordinary Session (AB 86xx), in effect October 3, 2001, added subdivision letter designation (a) before first paragraph, added subdivision letter designation (b) before ““Diesel fuel” does not include”, added “gasoline,” after “does not include” and added “, liquefied petroleum gas, natural . . . or alcohol” after “kerosene” in subdivision (b), and added subdivisions (c) and (d).

Text of section operative January 1, 2007

60022. **“Diesel fuel.”** (a) “Diesel fuel” means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle.

However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

“Diesel fuel” does not include kerosene, gasoline, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(b) This section shall become operative on January 1, 2007.

History.—Added by Stats. 2001, Ch. 8 of the 2nd Extraordinary Session (AB 86xx), in effect October 3, 2001. Stats. 2003, Ch. 605 (SB 1060), effective January 1, 2004, substituted ““Diesel fuel” does not include kerosene, gasoline, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.” for the former third paragraph pertaining to what is included within the definition of “diesel fuel.”

Text of section operative through December 31, 2001

60023. **“Blended diesel fuel.”** “Blended diesel fuel” means any mixture of diesel fuel with respect to which tax has been imposed and any other liquid (such as kerosene) on which tax has not been imposed (other than diesel fuel dyed in accordance with United States Environmental Protection Agency or Internal Revenue Service rules).

Text of section operative October 3, 2001 through December 31, 2006

60023. **“Blended diesel fuel.”** (a) “Blended diesel fuel” means any mixture of diesel fuel with respect to which tax has been imposed and any other liquid (such as kerosene) on which tax has not been imposed (other than diesel fuel dyed in accordance with United States Environmental Protection Agency or Internal Revenue Service rules). Blended diesel fuel also means any conversion of a liquid into diesel fuel. “Conversion of a liquid into diesel fuel” occurs when any liquid that is not included in the definition of diesel fuel and that is outside the bulk transfer/terminal system is sold as diesel fuel, delivered as diesel fuel, or represented to be diesel fuel.”

(b) “Blended diesel fuel” does not include a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive package that causes the water droplets to remain suspended within the diesel fuel, provided that the diesel fuel emulsion meets the standards set by the California Air Resources Board.

(c) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

History.—Stats. 2000, Ch. 1053 (AB 2114), operative January 1, 2002, added the second and the third sentences. Stats. 2001, Ch. 8 of the 2nd Extraordinary Session (AB 86xx), in effect October 3, 2001, added subdivision letter designation (a) before former sole paragraph, and added subdivisions (b) and (c).

Text of section operative January 1, 2007

60023. **“Blended diesel fuel.”** (a) “Blended diesel fuel” means any mixture of diesel fuel with respect to which tax has been imposed and any other liquid (such as kerosene) on which tax has not been imposed (other than diesel fuel dyed in accordance with United States Environmental Protection Agency or Internal Revenue Service rules). Blended diesel fuel also means any conversion of a liquid into diesel fuel. “Conversion of a liquid into diesel fuel” occurs when any liquid that is not included in the definition of diesel fuel and that is outside the bulk transfer/terminal system is sold as diesel fuel, delivered as diesel fuel, or represented to be diesel fuel.

(b) This section shall become operative on January 1, 2007.

History.—Added by Stats. 2001, Ch. 8 of the 2nd Extraordinary Session (AB 86xx), in effect October 3, 2001.

60024. **“Colorless marker.”** “Colorless marker” means material that does not reveal its presence until the diesel fuel into which it is introduced is subjected to a special test.

60025. **“Delivery.”** [Repealed by Stats. 1995, Ch. 555, in effect January 1, 1996.]

60025. **“Gallon.”** “Gallon” means the United States gallon of 231 cubic inches or the volumetric gallon adjusted to 60 degrees Fahrenheit when the invoice and settlement are made on the temperature corrected gallonage.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.

60026. **“Diesel-powered highway vehicle.”** “Diesel-powered highway vehicle” means a motor vehicle that is operated by a diesel-powered engine on a highway.

60027. **“Qualified highway vehicle operator.”** “Qualified highway vehicle operator” means any person licensed as a qualified highway vehicle operator that owns, operates, or otherwise controls a diesel-powered highway vehicle and delivers, or causes to be delivered, diesel fuel or any liquid into the fuel tank of a diesel-powered highway vehicle and is qualified to use dyed diesel fuel on the highway by the Internal Revenue Service under Section 48.4082-4 of Title 26 of the Code of Federal Regulations.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, deleted “, except an interstate trucker,” after “includes any person”. Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, substituted “Qualified highway” for “Highway” before “. . . vehicle operator” means”, substituted “means” for “includes” after “Qualified highway vehicle operator”, substituted “delivers” for “places” after “diesel-powered highway vehicle and”, substituted “delivered” for “placed” after “causes to be”, and added “and is qualified to use . . . of Title 26 of the Code of Federal Regulations” after “tank of a diesel-powered highway vehicle”.

60029. **“Bulk transfer.”** “Bulk transfer” means any transfer of diesel fuel by pipeline or vessel.

60030. **“Bulk transfer/terminal system.”** “Bulk transfer/terminal system” means the diesel fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Diesel fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Diesel fuel in the fuel tank of any engine, or in any railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

60031. **“Dyed diesel fuel.”** “Dyed diesel fuel” means diesel fuel that is dyed under United States Environmental Protection Agency or the Internal Revenue Service rules for high sulphur diesel fuel or low sulphur diesel fuel or any other requirements subsequently set by the United States Environmental Protection Agency or the Internal Revenue Service and considered destined for nontaxable, off-highway uses.

60032. **“Undyed diesel fuel.”** “Undyed diesel fuel” means diesel fuel that is not subject to the United States Environmental Protection Agency or Internal Revenue Service diesel fuel dyeing requirements.

60033. **“Supplier.”** “Supplier” includes any person who is any of the following:

- (a) Blender, as defined in Section 60012.
- (b) Enterer, as defined in Section 60013.
- (c) Position holder, as defined in Section 60010.
- (d) Refiner, as defined in Section 60011.
- (e) Terminal operator, as defined in Section 60009.
- (f) Throughputter, as defined in Section 60035.

60034. **“Highway vehicle operator/fueler.”** “Highway vehicle operator/fueler” includes:

- (a) Any person, other than a qualified highway vehicle operator, that owns, operates, or otherwise controls a diesel-powered highway vehicle and

delivers, or causes to be delivered, diesel fuel or any liquid into the fuel tank of a diesel-powered highway vehicle; or

(b) Any person who sells diesel fuel on which a claim for refund has been allowed, or who sells and delivers or causes to be delivered in the fuel tank of a diesel-powered highway vehicle or any liquid on which tax has not been imposed.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, substituted “Highway vehicle operator/fueler” includes: in the first paragraph; added subdivision (a); and added subdivision letter designation (b) before “Any person who sells”, substituted “any” for “Any” before “person who sells diesel fuel”, deleted “to a highway vehicle operator, dyed diesel fuel,” after “Any person who sells”, added “who sells and delivers . . . highway vehicle”, and deleted “and the diesel fuel or liquid is used in the operation of the diesel powered highway vehicle” in subdivision (b).

60035. “Throughputter.” “Throughputter” means any person that owns diesel fuel within the bulk transfer/terminal system (other than in a terminal) or is a position holder.

60036. “Ultimate vendor.” “Ultimate vendor” means a person that sells undyed diesel fuel to the user of the diesel fuel (the ultimate purchaser) for use on a farm for farming purposes or for use in an exempt bus operation.

60037. “Ultimate purchaser.” “Ultimate purchaser” means a person that uses diesel fuel for use on a farm for farming purposes or an exempt bus operator that uses diesel fuel in an exempt bus operation.

60038. “Registered ultimate vendor.” “Registered ultimate vendor” means a person that is licensed as an ultimate vendor pursuant to Section 60151.

60039. “Exempt bus operation.” (a) “Exempt bus operation” consists of the following:

(1) Any transit district, transit authority, or city owning and operating a local transit system itself or through a wholly owned nonprofit corporation.

(2) Any private entity providing transportation services for the transportation of people under contract or agreement, except general franchise agreements, with a public agency authorized to provide public transportation services, only for diesel fuel consumed while providing services under those contracts or agreements entered into subsequent to January 1, 1979.

(3) Any passenger stage corporation subject to the jurisdiction of the Public Utilities Commission when the motor vehicles of the passenger stage corporation are exclusively operated in urban or suburban areas or between cities in close proximity for the transportation of persons for hire, compensation, or profit. However, the exemption is not extended to any line or lines operated by the passenger stage corporation that exceed 50 miles of one-way route mileage.

(4) Any common carrier of passengers operating exclusively on any line or lines within the limits of a single city between fixed termini or over a regular route, 98 percent of whose operations, as measured by total route

mileage operated, are exclusively within the limits of a single city, and who by reason thereof is not a passenger stage corporation subject to the jurisdiction of the Public Utilities Commission.

(5) Any school district, community college district, or county superintendent of schools owning, leasing, or operating buses for the purpose of transporting pupils to and from school and for other school or college activities involving pupils, including, but not limited to, field trips and athletic contests.

(6) Any private entity providing transportation services for the purposes specified in paragraph (5) under contract or agreement with a school district, community college district, or county superintendent of schools, only for diesel fuel consumed while providing services under those contracts or agreements entered into subsequent to September 30, 1984.

(b) “Exempt bus operation” as defined in subdivision (a), shall not be applicable to a charter-party carrier of passengers. The term “charter-party carrier of passengers” has the same meaning as that specified in Section 5360 of the Public Utilities Code and shall further include those transportation services described in subdivisions (a) and (e) of Section 5353 of the Public Utilities Code, if that transportation service is rendered as contract carriage and not as common carriage of passengers.

60040. **“Exempt bus operator.”** “Exempt bus operator” includes any person that owns, operates, or controls an exempt bus operation.

60041. **“Train operator.”** “Train operator” includes any person that owns, operates, or controls a diesel-powered train and is licensed as a railroad by a state or federal agency.

History.—Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, substituted “a state or federal agency” for “the Interstate Commerce Commission” after “a railroad by”.

60042. **“Diesel-powered train.”** “Diesel-powered train” means any diesel-powered equipment or machinery that rides on rails, including equipment or machinery that transports passengers, freight, or a combination of both passengers and freight, and equipment or machinery that only carries freight or passengers of the operator thereof. Thus, the term includes a locomotive, work train, switching engine, and track maintenance machine.

60043. **“Government entity.”** (a) “Government entity” means this state and its political subdivisions except for a political subdivision that is only an exempt bus operator.

(b) Sections 60146 and 60205.5 do not apply to a government entity if both of the following apply:

(1) The diesel fuel is purchased tax-paid from a supplier or retail vendor.

(2) The tax-paid diesel fuel is used solely for the operation of a diesel-powered highway vehicle within this state.

History.—Added by Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995. Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, lettered former sole paragraph as subdivision (a) and added subdivision (b).

60044. **“Retail vendor.”** “Retail vendor” means any person who sells to a highway vehicle operator diesel fuel delivered in this state into a storage tank or into a fuel tank of a diesel-powered highway vehicle and at the time of sale collects diesel fuel tax from the highway vehicle operator.

History.—Added by Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995.

60045. **“Intercity bus.”** [Repealed by Stats. 2006, Ch. 364, (AB 3076), in effect January 1, 2007.]

60046. **“Intercity bus operator.”** [Repealed by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.]

60047. **“Pipeline.”** “Pipeline” means a fuel distribution system that moves diesel fuel, in the bulk, through a pipe, from a refinery to a terminal, from a terminal to another terminal, from a vessel to a terminal, or from a refinery or terminal to a vessel.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.

60047.1. **“Pipeline operator.”** “Pipeline operator” includes any person that owns, operates, or otherwise controls a pipeline.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.

60048. **“Sale.”** “Sale” means:

(a) The transfer of title to diesel fuel (other than diesel fuel in a terminal) to a buyer for consideration, which may consist of money, services, or other property.

(b) The transfer of the inventory position in the diesel fuel in a terminal if the buyer becomes the positionholder with respect to the diesel fuel.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.

60048.1. **“Tax-paid fuel.”** “Tax-paid fuel” or “tax paid” means the gallons of diesel fuel acquired on either a temperature corrected or volumetric basis on which the tax in Section 60050 has been imposed at the time of or prior to the acquisition by the supplier or person.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.

60049. **“Vessel.”** “Vessel” means a waterborne vessel used for transporting diesel fuel.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.

60049.1. **“Vessel operator.”** “Vessel operator” means any person that operates or otherwise controls a vessel.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.

CHAPTER 2. IMPOSITION OF TAX

- § 60050. Levy of tax.
- § 60050.1. Floor stock tax.
- § 60051. Levy of tax; rack removal.
- § 60052. Levy of tax; other.
- § 60053. Refiner liability.
- § 60054. Position holder liability.
- § 60055. Blender liability.
- § 60056. Qualified highway vehicle operator liability.
- § 60057. Highway vehicle operator/fueler liability.
- § 60058. Backup tax.

- § 60059. Terminal operator liability.
- § 60060. Terminal operator exclusion.
- § 60061. Enterer liability.
- § 60062. Terminal operator joint liability.
- § 60063. Two-party exchange.
- § 60064. Presumption of removal.

60050. Levy of tax. (a) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of diesel fuel subject to the tax in Sections 60051, 60052, and 60058.

(b) If the federal fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by this section, on and after the date of the reduction, shall be increased by an amount so that the combined state and federal tax rate per gallon equals thirty-three cents (\$0.33) .

(c) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt under this section.

60050.1. Floor stock tax. (a) For the privilege of storing, for the purpose of removal, sales, or use, every wholesaler owning undyed diesel fuel on July 1, 1995, shall pay a tax of eighteen cents (\$0.18) for each gallon of undyed diesel fuel according to the volumetric measure thereof, on which a tax has not been imposed under Part 3 (commencing with Section 8601) as in effect on June 30, 1995, and tax would have been imposed on any prior removal, entry, or sale of undyed diesel fuel had Sections 60050 to 60061, inclusive, applied to undyed diesel fuel for the period before July 1, 1995.

(b) For purposes of subdivision (a):

(1) “Storing” includes the possession in a storage facility, except an approved terminal or refinery, or a container of any kind, including the fuel tanks of motor vehicles, of undyed diesel fuel and the undyed diesel fuel purchased from and invoiced by the seller prior to July 1, 1995, and in transit on that date.

(2) “Owning” means having title to the undyed diesel fuel.

(3) “Wholesaler” means any person who sells diesel fuel in this state for resale to a retailer or to a person who is not a retailer and subsequently uses the diesel fuel and was required to be licensed under Part 3 (commencing with Section 8601) as a wholesaler as in effect on June 30, 1995.

60051. Levy of tax; rack removal. The tax specified in Section 60050 is imposed on the removal of diesel fuel in this state from a terminal if the diesel fuel is removed at the rack.

Legal incidence of Kansas motor fuel excise tax on distributor.—U.S. Supreme Court held that Kansas motor fuel tax imposed on the receipt of fuel by distributors was a nondiscriminatory tax imposed on an off-reservation transaction between non-Indians and did not violate the Indian nation’s sovereignty. The Kansas statute was dispositive that the legal incidence of the tax was on the distributor, and, even if the Kansas statute did not explicitly state the legal incidence was on the distributor, the Court would look to who was liable for the tax to decide who bears the legal incidence of the tax. *Wagnon v. Prairie Band Potawatomi Nation*, (2005) 546 U.S. ____.

60052. Levy of tax; other. The tax specified in Section 60050 is also imposed on all of the following:

(a) The removal of diesel fuel in this state from any refinery if either of the following applies:

(1) The removal is by bulk transfer and the refiner or the owner of the diesel fuel immediately before the removal is not a diesel fuel registrant.

(2) The removal is at the refinery rack.

(b) The entry of diesel fuel into this state for sale, consumption, use, or warehousing if either of the following applies:

(1) The entry is by bulk transfer and the enterer is not a diesel fuel registrant.

(2) The entry is not by bulk transfer.

(c) The removal or sale of diesel fuel in this state to an unregistered person unless there was a prior taxable removal, entry, or sale of the diesel fuel.

(d) The removal or sale of blended diesel fuel in this state by the blender thereof. The number of gallons of blended diesel fuel subject to tax is the difference between the total number of gallons of blended diesel fuel removed or sold and the number of gallons of previously taxed diesel fuel used to produce the blended diesel fuel.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added “or sale” after “The removal” in subdivision (c).

60053. Refiner liability. Every refiner shall pay tax on the removal of diesel fuel from a refinery as provided in subdivision (a) of Section 60052.

60054. Position holder liability. Every position holder shall pay the tax on the removal of diesel fuel from a terminal as defined under Section 60051.

60055. Blender liability. Any person that produces blended diesel fuel outside the bulk transfer/terminal system (the blender) shall pay tax as provided in subdivision (d) of Section 60052.

60056. Qualified highway vehicle operator liability. Every qualified highway vehicle operator is liable for the backup tax imposed under subdivision (a) of Section 60058.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, substituted “Every qualified” for “The” before “highway vehicle” and added “subdivision (a) of” after “backup tax imposed under”.

60057. Highway vehicle operator/fueler liability. Every highway vehicle operator/fueler is liable for the backup tax imposed under Section 60058.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, substituted “Every highway vehicle operator/fueler is” for “The end seller of diesel fuel generally is jointly and severally” before “liable for the backup” and deleted “if the end seller knows or has reason to know that the diesel fuel will be used in a diesel powered highway vehicle” after “Section 60058”.

60058. Backup tax. The tax specified in Section 60050 is imposed as a backup tax as follows:

(a) On the delivery into the fuel tank of a diesel-powered highway vehicle of:

(1) Any diesel fuel that contains a dye.

(2) Any diesel fuel on which a claim for refund has been allowed.

(3) Any liquid on which tax has not been imposed by this part, Part 2 (commencing with Section 7301), or Part 3 (commencing with Section 8601).

(b) On the sale of any diesel fuel on which a claim for refund has been allowed.

(c) On the sale and delivery into the fuel tank of a diesel-powered highway vehicle of any diesel fuel that contains a dye or any liquid on which tax has not been imposed by this part, Part 2 (commencing with Section 7301), or Part 3 (commencing with Section 8601).

(d) For the purposes of this section, aircraft jet fuel on which tax has been imposed only pursuant to Part 2, Chapter 2.5 (commencing with Section 7385) shall be deemed to be a liquid on which tax has not been imposed by Part 2 (commencing with Section 7301).

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, deleted “in this state” after “on the delivery” in the first paragraph. Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added “as follows:” after “as a backup tax” in the first paragraph; added subdivision letter designation (a) before “On the delivery into”; substituted “On” for “on” before “the delivery into”; deleted “any of the following” after “highway vehicle of” in subdivision (a); relettered former subdivisions (a), (b) and (c) as subdivision (a) paragraphs (1), (2) and (3), respectively; and added subdivisions (c) and (d).

60059. Terminal operator liability. The terminal operator is jointly and severally liable for the tax imposed under Section 60051 if both of the following apply:

(a) The position holder with respect to the diesel fuel is a person other than the terminal operator and is not a diesel fuel registrant.

(b) The terminal operator has not met the conditions of Section 60060.

60060. Terminal operator exclusion. A terminal operator is not liable for tax under Section 60059, if at the time of the removal, all of the following apply:

(a) The terminal operator is a diesel fuel registrant.

(b) The terminal operator has an unexpired notification certificate from the position holder as required by the Internal Revenue Service.

(c) The terminal operator has no reason to believe that any information in the certificate is false.

60061. Enterer liability. Every enterer shall pay tax on diesel fuel imported into this state as provided in subdivision (b) of Section 60052.

60062. Terminal operator joint liability. The terminal operator is jointly and severally liable for the tax imposed under Section 60051 if, in connection with the removal of diesel fuel that is not dyed or marked in accordance with the United States Environmental Protection Agency or Internal Revenue Service requirements, the terminal operator provides any person with any bill of lading, shipping paper, or similar document indicating that the diesel fuel is dyed or marked in accordance with the United States Environmental Protection Agency or Internal Revenue Service requirements.

60063. Two-party exchange. (a) The board may accept from the person who receives diesel fuel removed at a refinery or terminal rack an amount equal to the tax due and required to be paid by the refiner or

positionholder upon the removal of the diesel fuel from a refinery or terminal rack, as if the amount were payment of the tax by the refiner or positionholder under Section 60051 or 60052, as the case may be, if the Internal Revenue Service authorizes payment of federal fuel taxes by the receiving party under a two-party exchange agreement or similar arrangement.

(b) The refiner or positionholder shall remain primarily liable for payment of the tax imposed by Section 60051 or 60052 for diesel fuel removed at the refinery or terminal rack, as the case may be, plus any penalty or interest, until the amount is finally paid and credited to the account of the responsible refiner or positionholder; provided, however, that the board, at its discretion, may relieve the refiner or positionholder from primary liability for payment of tax imposed by Section 60051 or 60052 and hold another person primarily liable for the tax if (i) the Internal Revenue Service authorizes payment of fuel taxes by the receiving party under a two-party exchange agreement, and (ii) under the Internal Revenue Service approach to a two-party exchange agreement, another person is primarily liable for payment of the tax, and (iii) the board elects to follow the Internal Revenue Service approach.

(c) The board may adopt those regulations as it deems appropriate to carry out this section.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002. Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, substituted “60051” for “7362” after the second reference to “imposed by Section”, substituted “60052” for “7363” after the second reference to “60051 or”, and substituted “primarily” for “primary” after “another person”, in subdivision (b).

60064. Presumption of removal. (a) For the purpose of the proper administration of this part and to prevent evasion of the tax, unless the contrary is established, it shall be presumed that all diesel fuel received at a terminal in this state, imported into this state, or refined and placed into storage for removal at a refinery in this state or blended diesel fuel blended or converted in this state and no longer in the possession of the supplier has been removed or sold by the supplier.

(b) The presumption shall not apply if the supplier proves to the satisfaction of the board that both:

(1) The supplier has exercised ordinary care in entrusting control or possession of the diesel fuel to another person.

(2) The person to whom the supplier has entrusted the control or possession of the diesel fuel as bailee, consignee, employee, or agent, caused a removal or sale by the act of converting to that person’s own use the diesel fuel so entrusted to that person by the supplier.

(c) If the supplier proves to the satisfaction of the board, the existence of both of the circumstances in paragraphs (1) and (2) of subdivision (b), then the person who converted the diesel fuel to his or her own use, as well as any other person receiving that diesel fuel with the knowledge that it was so converted, shall be liable for payment of the tax imposed upon the removal

or sale, and all those persons shall be considered as suppliers for the purpose of Chapter 6 (commencing with Section 60201) or Chapter 7 (commencing with Section 60401) of this part.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.

CHAPTER 3. EXEMPTIONS

- § 60100. Exemptions.
- § 60101. Dyed fuel exemption.
- § 60102. Dyed fuel notice.
- § 60103. Form of notice.
- § 60104. Failure to post notice. [Repealed.]
- § 60105. Dyed diesel fuel penalties.
- § 60106. Train operator exemption.
- § 60106.1. Train operator; exemption certificate.
- § 60106.2. Exemption certificate; purchaser liability.
- § 60106.3. Misuse of exemption certificate.
- § 60107. Train operator report.
- § 60108. Government entity payment.

60100. Exemptions. (a) The provisions of this part requiring the payment of taxes do not apply to any of the following:

(1) The removal from a terminal or refinery of, or the entry or sale of, any diesel fuel if all of the following apply:

(A) The person otherwise liable for tax is a diesel fuel registrant.

(B) In the case of a removal from a terminal, the terminal is an approved terminal.

(C) The diesel fuel satisfies the dyeing and marking requirements of Section 60101.

(2) Any entry or removal from a terminal or refinery of taxable diesel fuel transferred in bulk to a refinery or terminal if the persons involved (including the terminal operator) are registered.

(3) The removal of diesel fuel if all of the following apply:

(A) The diesel fuel is removed by railroad car from an approved refinery and is received at an approved terminal.

(B) The refinery and the terminal are operated by the same diesel fuel registrant.

(C) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

(4) Diesel fuel which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside of this state by a supplier by means of any of the following:

(A) Facilities operated by the supplier.

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point.

(C) Delivery by the supplier to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.

(5) Backup tax does not apply to delivery of diesel fuel into the fuel tank of a diesel-powered highway vehicle as provided in Section 60058 for any of the following:

- (A) Use on a farm for farming purposes.
- (B) Use in an exempt bus operation.
- (C) Use in a diesel-powered highway vehicle that is operated off the highway.
- (D) Use in a diesel-powered highway vehicle that is owned and operated by a government entity.

(E) Use by the United States and its agencies and instrumentalities.

(6) Diesel fuel sold by credit card certified by the United States Department of State to any consulate officer or consulate employee of a foreign government who is not engaged in any private occupation for gain within this state, who uses the diesel fuel in a motor vehicle which is registered with the United States Department of State, and whose government has done either of the following:

(A) Entered into a treaty with the United States providing for the exemption of its representatives from national, state, and municipal taxes.

(B) Granted a similar exemption to representatives of the United States.

(7) Diesel fuel sold by a supplier to a train operator for use in a diesel-powered train or for other off-highway use and the supplier has on hand an exemption certificate from the train operator.

(8) Diesel fuel sold by a supplier to the United States and its agencies and instrumentalities.

(b) For purposes of this section:

(1) "Carrier" means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers.

(2) "Forwarding agent" means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

History.—Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995, added subparagraphs (D) and (E) to paragraph (5) of, and added paragraph (8) to, Subdivision (a). Stats. 1995, Ch. 555, in effect January 1, 1996, deleted "in this state" after "apply to delivery" in subdivision (a)(5).

60101. Dyed fuel exemption. (a) Diesel fuel that is required to be dyed satisfies the dyeing requirement of this part if it meets the dyeing requirements of the United States Environmental Protection Agency and the Internal Revenue Service, including, but not limited to, requirements respecting type, dosage, and timing.

(b) Marking shall meet the marking requirements of the Internal Revenue Service.

(c) No person shall operate or maintain a motor vehicle on any public highway in this state with dyed diesel fuel in the fuel supply tank. This subdivision does not apply to uses of dyed diesel fuel on the highway that are lawful under the Internal Revenue Code or regulations promulgated thereunder, if the person is registered as a qualified highway vehicle operator, exempt bus operator, or government entity.

History.—Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995, added Subdivision (c). Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted “that” for “which” after “on the highway” and added “, or if the . . . an interstate user” after “or government entity” in the second sentence of subdivision (c). Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added “qualified” after “registered as a” in the second sentence of subdivision (c). Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, deleted “, or if the person is an intercity bus operator, as defined in Section 60046, who is registered as an interstate user under this part” after “or government entity” in the second sentence of subdivision (c).

60102. Dyed fuel notice. Notice is required with respect to dyed diesel fuel. In general, a notice stating: “DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE” shall be:

(a) Provided by the terminal operator to any person that receives dyed diesel fuel at a terminal rack of that terminal operator.

(b) Provided by any seller of dyed diesel fuel to its buyer if the diesel fuel is located outside the bulk transfer/terminal system and is not sold from a retail pump posted in accordance with the requirements of subdivision (c).

(c) Posted by a seller on any retail pump where it sells dyed diesel fuel for use by its buyer.

60103. Form of notice. The form of notice required under subdivisions (a) and (b) of Section 60102, shall be provided by the time of the removal or sale and shall appear on shipping papers, bills of lading, and invoices accompanying the sale or removal of the dyed diesel fuel.

60104. Failure to post notice. [Repealed by Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998.]

60105. Dyed diesel fuel penalties. (a) A penalty applies to any person who does any of the following:

(1) Sells or holds for sale dyed diesel fuel for any use that the person knows or has reason to know is a taxable use of the diesel fuel.

(2) Holds for use or uses dyed diesel fuel for a use other than a nontaxable use and that person knew, or had reason to know, that the diesel fuel was so dyed.

(3) Knowingly alters, or attempts to alter, the strength or composition of any dye or marker in any dyed diesel fuel.

(4) Fails to provide or post the required notice with respect to any dyed diesel fuel. The failure to provide or post the required notice creates a presumption that the person so failing knows the diesel fuel will be used for a taxable use.

(b) The amount of the penalty for each violation specified in subdivision (a) is the greater of:

(1) Ten dollars (\$10) for every gallon of diesel fuel involved or

(2) The product of one thousand dollars (\$1,000), and the total number of penalties, including the penalty currently being determined, imposed by this section on the person (or a related person or any predecessor of that person or related person).

(c) If a penalty is imposed under this section on any business entity, each officer, employee, or agent of the entity, who participated in any act giving rise to the penalty shall be jointly and severally liable with the entity for the penalty.

History.—Added by Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998. Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added “the greater of:” after “in subdivision (a) is” in subdivision (b); added paragraph number designation (1) before “Ten dollars”; substituted “Ten” for “ten” in paragraph (1); added paragraph number designation (2) before “The product of”; added “The product of” before “one thousand dollars”, deleted “whichever is greater. The penalty shall be increased for subsequent violations by multiplying the penalty amount by the number of prior violations” after “(\$1,000)” and added “and the total number of penalties, . . . (or a related person or any predecessor of that person or related person)” after “(\$1,000)” to paragraph (2).

60106. Train operator exemption. Any sale of diesel fuel to a train operator claimed as exempt from taxes under paragraph (7) of subdivision (a) of Section 60100 shall be supported by an exemption certificate executed by the purchaser in a form as prescribed by the board. The supplier shall retain the certificate in his or her records in support of the exemption.

60106.1. Train operator; exemption certificate. In order to issue an exemption certificate as provided in Section 60106, the train operator shall obtain a permit from the board. Every application for a permit shall be made upon a form prescribed by the board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the board may require. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

60106.2. Exemption certificate; purchaser liability. If a purchaser gives a Section 60106 exemption certificate to a supplier that the diesel fuel purchased will be used in a manner or for a purpose entitling the supplier to regard the removal as exempt from the taxes as provided in paragraph (7) of subdivision (a) of Section 60100 and sells the diesel fuel or uses the diesel fuel in some other manner or for some other purpose, the purchaser shall be liable for payment of the tax under Chapter 2 (commencing with Section 60050) of this part. The tax, applicable penalties, and interest shall become due and payable and shall be ascertained and determined in the same manner as the backup tax under Section 60361.5.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, deleted “as if the purchaser were a supplier of the diesel fuel at the time of that sale or use” after “(commencing with Section 60050) of this part” in the first sentence, and added the second sentence.

60106.3. Misuse of exemption certificate. (a) Any person, including any officer or employee of a corporation, who gives a Section 60106 exemption certificate for diesel fuel that he or she knows at the time of purchase is not to be used by him or her or the corporation in the manner or for the purpose entitling the exemption for the purpose of evading payment to the supplier of the amount of the tax applicable to the transaction is guilty of a misdemeanor punishable as provided in Section 60706 or a felony punishable as provided in Section 60707.

(b) Any person, including any officer or employee of a corporation, who gives a certificate for diesel fuel pursuant to Section 60106 that he or she knows at the time of purchase is not to be used by him or her or the corporation in the manner or for the purpose entitling the exemption is liable to the state for the amount of tax that would be due if he or she had not given that certificate. In addition to the tax, the person shall be liable to the state for a penalty of 25 percent of the tax or one thousand dollars (\$1,000), whichever is greater, for each certificate issued for personal gain or to evade the payment of taxes.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, substituted “one thousand dollars (\$1,000)” for “five hundred dollars (\$500)” after “of the tax or” and substituted “certificate issued” for “purchase made” after “is greater, for each” in the second sentence of subdivision (b).

60107. Train operator report. (a) For the privilege of purchasing diesel fuel exempt from taxes under paragraph (7) of subdivision (a) of Section 60100, each train operator must make a report to the board showing:

(1) The name and permit number of the supplier from whom it purchased undyed diesel fuel and the number of gallons of undyed diesel fuel purchased that is exempt from the tax.

(2) Any other information required by the board.

(b) Each train operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the information in subdivision (a) during each quarterly reporting period. The report shall be filed with the board on or before the last day of the calendar month following the close of the quarterly period to which it relates. To facilitate the administration of this part, the board may require the filing of these reports for other than quarterly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(c) The board may revoke the train operator’s permit provided for in Section 60106.1 due to the filing of inaccurate or improper reports.

(d) All of the administrative provisions of this part relating to a supplier shall be applicable to a train operator.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added subdivision (d). Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, deleted “on forms prescribed by the board” after “with the board” and added “in the form . . . electronic media” after “a report” in the first sentence of, and added the fourth sentence to, subdivision (b).

60108. Government entity payment. Notwithstanding the exemption provided for in subparagraph (D) of paragraph (5) of subdivision (a) of Section 60100, any government entity using diesel fuel exempt from tax under subparagraph (D) of paragraph (5) of subdivision (a) of Section 60100 shall, for the privilege of operating diesel-powered highway vehicles on highways in this state, make a payment equal to the tax specified in Section 60050 for each gallon of exempt diesel fuel used. The payments required by

this subdivision shall be paid to the State Board of Equalization in the manner prescribed by the board, and the payments shall be treated as a tax for all purposes of this part.

History.—Added by Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995.

CHAPTER 4. INTERSTATE USERS

- Article 1. Definitions. §§ 60110–60114.
- 2. Imposition of Tax. § 60115–60116.
- 3. Licenses for Interstate Users. §§ 60120–60122.
- 4. Administrative Provisions. § 60128.

Article 1. Definitions

- § 60110. Construction.
- § 60111. “Interstate user.”
- § 60112. “Qualified motor vehicle.”
- § 60113. “Recreational vehicle.”
- § 60114. “Diesel vendor.”

60110. Construction. Except where the context otherwise requires, the definitions given in this chapter govern the construction of this chapter and this part.

60111. “Interstate user.” “Interstate user” includes any person who uses diesel fuel in the operation of a qualified motor vehicle in this state and who operates the qualified motor vehicle within and without this state or the United States.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “user” for “trucker” after “Interstate”.

60112. “Qualified motor vehicle.” “Qualified motor vehicle” means a motor vehicle used, designed, or maintained for transportation of persons or property that (a) has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms, (b) has three or more axles regardless of weight, or (c) is used in combination, when the weight of that combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight. “Qualified motor vehicle” does not include recreational vehicles.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “11,797” for “12,000” after “26,000 pounds or” in the first sentence.

60113. “Recreational vehicle.” “Recreational vehicle” means motor vehicles such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the motor vehicle shall not be used in connection with any business endeavor.

60114. “Diesel vendor.” “Diesel vendor” means every person who sells diesel fuel in this state and places, or causes to be placed, the diesel fuel into a fuel tank of a qualified motor vehicle and at the time of sale, collects the diesel fuel tax from an interstate user.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “user” for “trucker” after “from an Interstate”.

Article 2. Imposition of Tax

§ 60115. Levy of tax.

§ 60116. Interstate user component b rate.

60115. Levy of tax. For the privilege of using diesel fuel in a qualified motor vehicle in this state by interstate users, there is hereby imposed upon any interstate user for each gallon of diesel fuel used in this state, a tax consisting of the following two components:

(a) A tax at the rate imposed by Section 60050.

(b) A tax at the rate prescribed by Section 60116.

History.—Added by Stats. 1994, Ch. 912 (SB 840), in effect September 27, 1994, operative July 1, 1995. Stats. 1995, Ch. 555 (SB 718), in effect January 1, 1996, substituted “users” for “truckers” after “state by interstate” and substituted “user” for “trucker” after “upon any interstate” in subdivision (a). Stats. 1997, Ch. 618 (AB 1269), in effect October 3, 1997, amended the introductory clause by deleting subdivision designation (a) at the beginning, adding “in this state” after “fuel used”, and substituting “consisting of the following two components:” for “of eighteen cents (\$0.18).”; added subdivisions (a) and (b); and deleted former subdivisions (b) and (c) which read: “(b) If the federal fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by this section, on and after the date of the reduction, shall be increased by an amount so that the combined state and federal tax rate per gallon equals thirty-three cents (\$0.33). “(c) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt under this section.”

60116. Interstate user component b rate. Commencing on January 1, 1998, and on each January 1 thereafter, the board shall establish a tax rate per gallon, rounded to the nearest tenth of a cent, by multiplying the average retail price per gallon (including the federal excise tax and excluding the state excise tax and the sales and use tax) of diesel fuel sold in this state by a percentage equal to the combined state and local sales tax rate established by Part 1 (commencing with Section 6001) and Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code and Section 35 of Article XIII of the California Constitution. The average retail price per gallon shall be the average of weekly retail prices for the 12-month period ending August 31 of the year prior to the effective date of the new rate. In determining the average retail price per gallon, the board shall use the weekly average retail price published by the State Energy Resources Conservation and Development Commission, in its publication “Fuel Price And Supply Update.” In the event the “Fuel Price And Supply Update” is delayed or discontinued, the board may base its determination on other sources of the average retail price of diesel fuel. The board shall make its determination of the rate no later than October 1 of the year prior to the effective date of the new rate.

History.—Added by Stats. 1997, Ch. 618 (AB 1269), in effect October 3, 1997.

Article 3. Licenses for Interstate Users

§ 60120. To whom issued.

§ 60121. Security requirement.

§ 60122. Diesel fuel trip permit.

60120. To whom issued. Every person operating a qualified motor vehicle within and without this state or the United States shall apply to the board for a license on forms prescribed by the board. It is unlawful for any person to be an interstate user without first securing a license.

History.—Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, substituted “within and without this state or the United States” for “in interstate commerce” in the first sentence and added the second sentence.

60121. Security requirement. Before granting a license to an interstate user, the board may require the person to file with the board security pursuant to Section 60401. The license issued to any interstate user is not transferable and is valid until canceled or revoked.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “user” for “trucker” after “as an interstate” in the first sentence and after “to any interstate” in the second sentence. Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, substituted “to” for “authorizing a person to engage in business as” after “granting a license” and added a comma after “an interstate user” in the first sentence.

60122. Diesel fuel trip permit. The board or its authorized representative may issue a California fuel trip permit to interstate users for entry into this state. The California fuel trip permit shall be valid for four consecutive days and includes any reentry into the state during the four-day period. The fee for issuance of a California fuel trip permit is thirty dollars (\$30). Other provisions of this article and Article 1 (commencing with Section 60201) of Chapter 6 shall not apply to the holder of a California fuel trip permit who uses only diesel fuel brought into this state in the fuel tank of the qualified motor vehicle and diesel fuel purchased in this state with the diesel fuel tax paid and delivered into the fuel tank of the qualified motor vehicle. Any diesel fuel tax paid to a diesel vendor for diesel fuel taken out of the state in the fuel tank of a qualified motor vehicle operated under a California fuel trip permit shall not be refunded to the holder of the California fuel trip permit, notwithstanding any other provision of this part.

The board may enter into an interagency agreement with the Department of Motor Vehicles providing for the issuance of California fuel trip permits by that department.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “user” for “trucker” after “for any interstate” in the first sentence of the second paragraph. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted “or its authorized . . . interstate users and” for “may authorize the issuance of diesel fuel trip permits to” after “The board” in the first sentence of the first paragraph and substituted “California” for “diesel” before “fuel trip permit” throughout the section. Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted “for entry into this state” for “and holders of trip permits issued under Section 4004 of the Vehicle Code” after “to interstate users” in the first sentence and substituted “four consecutive days . . . four-day period” for “the same period as the trip permit issued under Section 4004 of the Vehicle Code” after “be valid for” in the second sentence of the first paragraph, and deleted “The board may deny the issuance of more than one California fuel trip permit for any interstate user determined by the board to bring vehicles into this state on a regular, ongoing basis. The board shall maintain a file of all permits issued under this section for the purpose of determining the effectiveness of the program and the appropriateness of the fee.” as the first two sentences of the second paragraph.

Article 4. Administrative Provisions

§ 60128. Administration.

60128. Administration. All of the administrative provisions of this part not inconsistent with this chapter shall be applicable to the administration of the tax imposed by Section 60115.

CHAPTER 4.5. INTERNATIONAL FUEL TAX AGREEMENT *

§ 60130. Effective date.

60130. Effective date. Effective on and after January 1, 1996, the provisions of Chapter 2 (commencing with Section 9405) of Part 3.5 shall apply to all interstate users.

* Added by Stats. 1995, Ch. 555, in effect January 1, 1996.

CHAPTER 5. LICENSES

- Article 1. Licenses for Suppliers. §§ 60131–60135.
2. License for Exempt Bus Operator. §§ 60141–60143.
 - 2.5. License for Government Entity. § 60146.
 3. License for Ultimate Vendor. §§ 60151–60153.
 4. License for Qualified Highway Vehicle Operator. §§ 60161–60163.
 5. Denial of License. §§ 60171–60173.
 6. Revocation of License. §§ 60180–60186.
 7. Licensing of Locations. § 60190.

Article 1. Licenses for Suppliers

- § 60131. Supplier license.
- § 60132. Applications.
- § 60133. Security requirement.
- § 60135. Pipeline operator license.

60131. Supplier license. Every person, before becoming a supplier shall apply to the board for a license authorizing the person to engage in business as a supplier. A supplier's license shall be issued only to a person who is a supplier of diesel fuel within the meaning of the word "supplier" as defined in Section 60033. It is unlawful for any person to be a supplier without first securing a license.

60132. Applications. Applications shall be made on forms prescribed, prepared, and furnished by the board.

60133. Security requirement. Before granting a license authorizing a person to engage in business as a supplier, the board may require the person to file with the board security pursuant to Section 60401. The license issued to any supplier is not transferable and is valid until canceled or revoked.

60135. Pipeline operator license. Every person before becoming a pipeline operator or a vessel operator shall apply to the board for a license on forms prescribed by the board. In addition, every train operator that transports diesel fuel into, out of, or within this state shall obtain a license from the board on forms prescribed by the board. A train operator license, pipeline operator license or a vessel operator license shall be issued only to a person who is a train operator, pipeline operator or a vessel operator as defined in Sections 60041, 60047.1 and 60049.1. It is unlawful for a person to act as a pipeline operator or a vessel operator without first securing a license. It is unlawful for a train operator to transport diesel fuel into, out of, or within this state on or after January 1, 2009, without first securing a license under this section or a permit under Section 60106.1.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002. Stats. 2008, Ch. 306 (AB 3079), in effect January 1, 2009, added the second sentence; added "train operator license" after "A", added a comma after "pipeline operator license", added "train operator," after "person who is a", added a comma after "pipeline operator", added "60041," after "as defined in Sections" and added a comma after "60047.1" in the third sentence, and added the fourth sentence.

Article 2. License for Exempt Bus Operator

- § 60141. Exempt bus operator license.
- § 60142. Application.
- § 60143. Security requirement.

60141. **Exempt bus operator license.** Every person before becoming an exempt bus operator shall apply for a license authorizing the person to engage in business as an exempt bus operator. A license shall be issued only to a person who is an exempt bus operator as defined in Section 60040. It is unlawful for any person to be an exempt bus operator without first securing a license.

60142. **Application.** Application shall be made on forms to be prescribed, prepared, and furnished by the board.

60143. **Security requirement.** Before granting a license authorizing a person to engage in business as an exempt bus operator, the board may require the person to file with the board security pursuant to Section 60401. The license issued to any exempt bus operator is not transferable and is valid until canceled or revoked.

Article 2.5. License for Government Entity

§ 60146. Government entity license.

60146. **Government entity license.** Each government entity operating a diesel-powered highway vehicle upon this state's highways shall apply for a diesel fuel tax license on forms prescribed by the board. It is unlawful for any government entity to operate a diesel-powered highway vehicle upon the state's highways without first securing a diesel fuel tax license.

History.—Added by Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995.

Article 3. License for Ultimate Vendor

§ 60151. Ultimate vendor license.

§ 60152. Application.

§ 60153. Requirements.

60151. **Ultimate vendor license.** (a) A person shall be licensed if that person is engaged in the activity of an “ultimate vendor” of diesel fuel. It is unlawful for any person to act as an ultimate vendor without first securing a license.

(b) If a person is a supplier and an ultimate vendor, the supplier's license may cover the ultimate vendor activities.

60152. **Application.** Applications shall be made on forms prescribed, prepared, and furnished by the board.

60153. **Requirements.** The board shall license an applicant as an ultimate vendor of diesel fuel only if the board determines that the applicant meets the necessary requirements and is satisfied with the filing, deposit, payment, and claim history for all state taxes of the applicant.

Article 4. License for Qualified Highway Vehicle Operator

§ 60161. Qualified Highway Vehicle Operator License.

§ 60162. Application.

§ 60163. Security requirement.

60161. Qualified highway vehicle operator license. (a) Every person before becoming a qualified highway vehicle operator shall apply to the board for a license authorizing the person to engage in business as a qualified highway vehicle operator. A license shall be issued only to a person who is qualified to use dyed diesel fuel on the highway by the Internal Revenue Service under Section 48.4082-4 of Title 26 of the Code of Federal Regulations.

(b) If the person is already licensed as an exempt bus operator, government entity, or interstate user, the person does not need a separate qualified highway vehicle operator's license.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added subdivision letter designation "(a)" before former sole paragraph; added "person before becoming a qualified" after "(a) Every" in the first sentence of, deleted "and every end seller is required to be licensed at any time they incur liability for the backup tax under Section 60058. The highway vehicle operator and end seller" after "highway vehicle operator" in the first sentence of, added "to the board" after "shall apply" in the first sentence of, substituted "engaged in business as a qualified highway vehicle operator" for "report the backup tax" after "authorizing the person to" in the first sentence of, substituted "person who is . . . Code of Federal Regulations" for "highway vehicle operator who is subject to the backup tax in Section 60056 or to an end seller who is subject to the backup tax in Section 60057" after "issued only to a" in the second sentence of, subdivision (a); added subdivision (b).

60162. Application. Applications shall be made on forms prescribed, prepared, and furnished by the board.

60163. Security requirement. Before granting a license authorizing a person to report the backup tax as a qualified highway vehicle operator, the board may require the person to file with the board security pursuant to Section 60401. The license issued to any qualified highway vehicle operator is not transferable and is valid until canceled or revoked.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added "qualified" in the first and second sentences, deleted "or an end seller" after "vehicle operator" in the first sentence, and deleted "or end seller" after "vehicle operator" in the second sentence.

Article 5. Denial of License

- § 60171. Grounds for denial.
- § 60172. Right to hearing.
- § 60173. Notice of denial.

60171. Grounds for denial. The board may refuse to issue any license in either of the following circumstances:

(a) If the application therefor is filed by an applicant who formerly held any license under this part that, prior to the time of filing the application, has been revoked for cause by the board.

(b) If the board determines that the application therefor is not filed in good faith or made by the real person in interest.

60172. Right to hearing. Prior to refusal specified in Section 60171, the board shall grant the applicant a hearing and shall give him or her at least 10 days' written notice of the time and place thereof.

60173. Notice of denial. The notice specified in Section 60172 shall be addressed to the applicant at his or her address as it appears in the records of the board, and shall be given in the manner prescribed in Section 60311 for giving notice of a deficiency determination.

Article 6. Revocation of License

- § 60180. Grounds for revocation.
- § 60181. Grounds for revocation; cause.
- § 60182. Notice of revocation.
- § 60183. Cancellation of license.
- § 60184. Tax liability upon revocation.
- § 60185. Reinstatement.
- § 60186. Unlawful operation after revocation.

60180. Grounds for revocation. The board may revoke the license of any person who refuses or neglects to comply with any provision of this part or any rule or regulation of the board prescribed and adopted under this part.

60181. Grounds for revocation; cause. The board may revoke any of the following licenses:

(a) Any supplier's license held by a person who does not engage in, or who discontinues, the removal, entry, or sale of diesel fuel, producing of blended diesel fuel, owning or holding inventory position of diesel fuel, or owning or operating a refinery or terminal as any of the following:

- (1) A blender, as defined in Section 60012.
- (2) An enterer, as defined in Section 60013.
- (3) A position holder, as defined in Section 60010.
- (4) A refiner, as defined in Section 60011.
- (5) A terminal operator, as defined in Section 60009.
- (6) A throughputter, as defined in Section 60035.

(b) Any interstate user's license held by a person who does not engage in, or who discontinues, using diesel fuel as an "interstate user" as defined in Section 60111.

(c) Any ultimate vendor's license held by a person who does not engage in, or who discontinues, selling undyed diesel fuel as an "ultimate vendor" as defined in Section 60036.

(d) Any exempt bus operator's license held by a person who does not engage in, or who discontinues, using diesel fuel as an "exempt bus operator" as defined in Section 60040.

(e) Any qualified highway vehicle operator's license held by a person who does not engage in, or who discontinues, the delivery of diesel fuel subject to the backup tax into fuel tanks of diesel-powered highway vehicles as a qualified highway vehicle operator as defined in Section 60027.

(f) Any government entity's license held by a government entity that does not engage in, or that discontinues using diesel fuel in, the operation of a diesel-powered highway vehicle upon the state's highways.

History.—Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995, added Subdivision (f). Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "user's" for "trucker's" after "Any interstate" and substituted "user" for "trucker" after "as an interstate" in subdivision (b). Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added "qualified" after "Any", deleted "or end seller's" after "vehicle operator's", added "qualified" after "vehicles as a", and deleted "or as an end seller as defined in Section 60034" after "Section 60027" in subdivision (e).

60182. Notice of revocation. Prior to revoking any license, the board shall notify the licensee to show cause, within 10 days after the notice is

given, why his or her license should not be revoked. The notice shall be given in the manner prescribed in Section 60311 for giving notice of a deficiency determination.

60183. **Cancellation of license.** The board may cancel any license issued under this part immediately upon surrender thereof, but before revoking a license, the board shall allow the person an opportunity to show cause as provided in Section 60182.

60184. **Tax liability upon revocation.** Upon revocation or cancellation of the license of the person or his or her cessation of business, all diesel fuel remaining in his or her possession or ownership shall be deemed removed, entered, sold, delivered, or used and subject to jeopardy determination as provided in Section 60330 if, in the judgment of the board, it is necessary to ensure payment of the tax with respect to the removal, entry, sale, delivery, or use of the diesel fuel.

60185. **Reinstatement.** Subsequent to the revocation of the license of a person, the board shall reinstate the permit when the person pays the amount of tax determined, together with interest and penalties, fully complies with this part, and pays a fee of fifty dollars (\$50) to the board for reinstatement. The fee shall not be subject to refund except as provided in Section 60521.

60186. **Unlawful operation after revocation.** It is unlawful for any person to operate in this state after a license has been revoked.

Article 7. Licensing of Locations

§ 60190. Requirement to disclose multiple locations.

60190. **Requirement to disclose multiple locations.** Every person required to be licensed by the board shall provide the board with the names and addresses of all agents operating in this state, the location of all offices or other places of business in this state, and any other information as the board may require.

CHAPTER 6. DETERMINATIONS AND PAYMENTS

- Article 1. Returns and Payments. §§ 60201-60212.
- 1.1 Payment by Electronic Funds Transfer. §§ 60250-60253.
 2. Determination If No Return Made. §§ 60301-60304.
 3. Deficiency Determinations. §§ 60310-60317.
 4. Jeopardy Determinations and Weekly Payments. §§ 60330-60340.
 5. Redeterminations. §§ 60350-60356.
 6. Payment by Unlicensed Person. §§ 60360-60366.

Article 1. Returns and Payments

- § 60201. Return.
- § 60201.1. Return; floor stock tax.
- § 60201.2. Purchaser's election to delay payment to supplier.
- § 60201.3. Worthless accounts; supplier.
- § 60202. Return; interstate user.
- § 60203. Return; throughputter. [Repealed.]
- § 60204. Report; terminal operator.

- § 60204.5. Report; pipeline operator and vessel operator.
- § 60204.6. Report; train operator.
- § 60205. Return; exempt bus operator.
- § 60205.5. Return; government entity.
- § 60206. Return; qualified highway vehicle operator.
- § 60207. Penalty.
- § 60208. Extension of time.
- § 60209. Excusable delay.
- § 60210. Excusable delay; reliance on Board advice.
- § 60210.5. Relief of spouse.
- § 60211. Disaster.
- § 60212. Relief of interest.

60201. Return. Each supplier shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of diesel fuel removed, entered, or sold by him or her within this state during each calendar month, or the monthly period ended during that calendar month as the board may authorize, the amount of tax due for the month covered by the return, and any other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the calendar month following the monthly period to which it relates, together with a remittance payable to the board for the amount of tax due for that period, less whatever amounts may have been paid theretofore for the same period because of weekly returns. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, deleted “on forms prescribed by the board” after “with the board” and added “in the form . . . electronic media” after “a return” in the first sentence, and added the fourth sentence.

60201.1. Return; floor stock tax. Each person subject to the tax imposed under Section 60050.1, on or before September 30, 1995, shall prepare and file with the board, on forms prescribed by the board, a return showing the total number of gallons of undyed diesel fuel owned by the person on July 1, 1995, for which a tax has not been imposed under Part 3 (commencing with Section 8601) as in effect on June 30, 1995, the amount of the tax imposed, and any other information that the board deems necessary for the proper administration of this part.

The return shall be accompanied by a remittance payable to the board in the amount of tax due.

60201.2. Purchaser’s election to delay payment to supplier. A supplier who sells taxable diesel fuel shall collect from the purchaser the diesel fuel tax imposed under Section 60050. At the election of the purchaser, the payment of the diesel fuel tax owed on every gallon of diesel fuel purchased from a supplier shall be remitted to the supplier on terms agreed upon between the purchaser and the supplier or on or before five working days before the last day of the calendar month following the monthly period to which it relates. This election shall be subject to a condition that the

purchaser's remittances of all amounts of tax due to the seller shall be paid by electronic funds transfer. The purchaser's election may be terminated by the seller if the purchaser does not make timely payments to the seller as required by this section. This section shall not apply where the purchaser is required by a supplier to pay cash or cash equivalent for diesel fuel purchases.

History.—Added by Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995. Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, deleted "(a)" at the beginning of the section and deleted subdivision (b) which read: "This section shall cease to be operative on July 1, 1997, and as of January 1, 1998, is repealed."

60201.3. Worthless accounts; supplier. (a) A supplier is relieved from liability for diesel fuel tax insofar as the sales of the diesel fuel are represented by accounts which have been found worthless and charged off for income tax purposes. If the supplier has previously paid the amount of the tax, he or she may, under the rules and regulations prescribed by the board, take a credit in that amount. If those accounts are thereafter in whole or in part collected by the supplier, the gallons of diesel fuel represented by the amounts collected shall be included in the first return filed after that collection and the amount of the tax thereon shall be paid with the return. The board may, at its option, require the supplier to submit periodic reports listing accounts delinquent for a 90-day period or more.

(b) Any customer of a supplier who has failed to pay for diesel fuel purchased and for which the supplier has been allowed a credit under subdivision (a) is liable to the state for the diesel fuel tax as an unlicensed supplier and the tax, applicable penalties, and interest become immediately due and payable under the unlicensed persons provisions contained in Article 6 (commencing with Section 60360) of Chapter 6. The notice of determination issued under Section 60361 shall be given to the customer within three years of the last day of the calendar month following the reporting period for which the supplier took a credit for the tax previously paid on the customer's account or within three years after the date a refund of the tax was paid.

History.—Added by Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995. Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, deleted subdivision (c) which read: "This section shall cease to be operative on July 1, 1997, and as of January 1, 1998, is repealed." Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, added the last sentence to subdivision (b).

60202. Return; interstate user. (a) Each interstate user shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the amount of diesel fuel used during the quarterly reporting period by the interstate user in this state, the amount of any tax due, and any other information as the board may require for the administration of this part. The return shall be filed with the board on or before the last day of the calendar month following the close of the quarterly period to which it relates, together with a remittance payable to the board of the amount of tax due. To facilitate the administration of this part, the board may require the filing of returns for other than quarterly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) An interstate user subject to the tax imposed by Section 60115 shall be allowed a credit against the amount of tax due on his or her return for an amount equal to the tax imposed by Section 60115 on diesel fuel purchased in this state in that same return period for use in the operation of a qualified motor vehicle. No credit shall be allowed unless the tax imposed by Section 60050 and the taxes imposed by Part 1 (commencing with Section 6001) and Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code and Section 35 of Article XIII of the California Constitution have been paid upon the purchase of the diesel fuel by the interstate user to a diesel vendor in this state. When the amount of the credit for any return period exceeds the amount of tax due for the return period, the excess shall be allowed as a credit against the amount of tax due for succeeding reporting periods or shall be refunded.

(c) Credits and refunds allowed pursuant to subdivision (b) shall be charged against the Motor Vehicle Fuel Account to the extent the total amount of credits and refunds allowed to all taxpayers for the fiscal year does not exceed the combined amounts due under subdivisions (a) and (b) of Section 60115. To the extent the total amount of credits and refunds allowed to all taxpayers for the fiscal year pursuant to subdivision (b) exceeds the combined amounts due under subdivisions (a) and (b) of Section 60115, the credits and refunds shall be charged against the Motor Vehicle Fuel Account as to the amount of the credits and refunds established under subdivision (a) of Section 60115 and shall be charged against the Retail Sales Tax Fund as to the amount of the credits and refunds established under subdivision (b) of Section 60115.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “user” for “trucker” after “Each interstate” and after “by the interstate” in subdivision (a); substituted “user” for “trucker” after “An interstate” in subdivision (b); and added subdivision (c). Stats. 1997, Ch. 618 (AB 1269), in effect October 3, 1997, substituted “subject to the . . . shall be refunded” for “who has paid diesel fuel tax to a diesel vendor in this state shall be allowed a credit on his or her return for the tax paid to the diesel vendor” after “An interstate user” in subdivision (b) and substituted “Credits and refunds . . . of Section 60115” for “If any interstate user has paid a backup tax to the state, he or she shall be allowed a credit against the amount of tax due under Section 60115 with respect to that diesel fuel on which the backup tax was paid to the state.” in subdivision (c). Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, deleted “on forms prescribed by the board” after “with the board” and added “in the form . . . electronic media” after “a return” in the first sentence of, and added the fourth sentence to, subdivision (a).

60203. Return; throughput. [Repealed by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.]

60204. Report; terminal operator. (a) Each terminal operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, the following:

- (1) The name and license number of each person that is a positionholder at each terminal it operates.
- (2) The amount of diesel fuel received at each terminal it operates.
- (3) The identity of each positionholder with respect to the rack removals of diesel fuel from each terminal it operates and the volume and dates of the removals.
- (4) The amount of diesel fuel stored at each terminal it operates.

(5) The destination (by state) of all diesel fuel removed at a terminal rack of each terminal it operates, to the extent that information has been provided to the terminal operator.

(6) Any other information required by the board for the proper administration of this part.

The terminal operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) Upon written approval of the board, a terminal operator may satisfy the requirements of subdivision (a) above by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the terminal operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board may, in its sole discretion, rescind its approval and require a terminal operator to file reports as specified in subdivision (a).

History.—Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, completely revised section.

60204.5. Report; pipeline operator and vessel operator. (a) Each pipeline operator and vessel operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

(1) The amount of diesel fuel delivered to each terminal or refinery.

(2) The location of the terminal or refinery where the diesel fuel was delivered.

(3) The date of delivery.

(4) Any other information required by the board for the proper administration of this part. The pipeline operator and vessel operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) Upon written approval of the board, a pipeline operator and vessel operator may satisfy the requirements of subdivision (a) by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the pipeline operator and vessel operator under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board may, in its sole discretion, rescind its approval and require a pipeline operator and vessel operator to file reports as specified in subdivision (a).

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.

60204.6. Report; train operator. Each train operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

(a) The amount of diesel fuel delivered into, out of, or within this state.

(b) The location where the diesel fuel was delivered.

(c) The date of delivery.

(d) Any other information required by the board for the proper administration of this part. The train operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Added by Stats. 2008, Ch. 306 (AB 3079), in effect January 1, 2009.

60205. Return; exempt bus operator. Each exempt bus operator shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of diesel fuel used in the exempt bus operation by him or her within this state during each calendar month, or the monthly period ended during that calendar month as the board may authorize, the amount of tax pursuant to Section 60502.2 due for the month covered by the return, and any other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the calendar month following the monthly period to which it relates, together with a remittance payable to the board for the amount of tax due for that period. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, deleted “on forms prescribed by the board” after “with the board” and added “in the form . . . electronic media” after “a return” in the first sentence, and added the fourth sentence.

60205.5. Return; government entity. (a) Each government entity shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of dyed diesel fuel and undyed diesel fuel used in a diesel-powered highway vehicle during each calendar month, or the monthly period ending during the calendar month covered by the return, and any other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the calendar month following the monthly period to which it relates, together with a remittance payable to the board for the amount of tax due for that period. To facilitate the administration of this part, the board may

require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) A government entity that has paid diesel fuel tax to a retail vendor that sold the diesel fuel to the government entity shall be allowed a credit on its tax return for the tax paid to the retail vendor.

History.—Added by Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995. Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, deleted “on forms prescribed by the board” after “with the board” and added “in the form . . . electronic media” after “a return” in the first sentence, and added the fourth sentence.

60206. Return; qualified highway vehicle operator. Each qualified highway vehicle operator shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of diesel fuel subject to the backup tax that was delivered into the fuel tank of a diesel-powered highway vehicle within this state during each calendar month, or the monthly period ended during that calendar month as the board may authorize, the amount of tax due for the month covered by the return, and any other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the calendar month following the monthly period to which it relates, together with a remittance payable to the board for the amount of tax due for that period. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added “qualified” after “Each”, deleted “and end seller” after “vehicle operator”, deleted “on forms prescribed by the board” after “with the board”, added “in the form as prescribed . . . electronic media” after “a return”, and deleted “or sold by him or her” after “diesel-powered highway vehicle” in the first sentence; and added the fourth sentence.

60207. Penalty. (a) Any person who fails to pay the amount of tax shown to be due by that person’s return on or before the last day of the month following the reporting period to which it relates, shall pay a penalty of 10 percent of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due dates set forth in Article 1 (commencing with Section 60201) shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the taxes for which the return is required for any one return.

History.—Stats. 1996, Ch. 1087, in effect January 1, 1997, deleted “file a report or return or to” after “who fails to” and deleted “or fifty dollars (\$50), whichever is greater” after “of the tax”. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added subdivision letter designation (a) before former sole paragraph, added subdivisions (b) and (c).

60208. Extension of time. The board for good cause may extend for a period not to exceed one month, the time for making any report or return or paying any tax required under this part. The extension may be granted at any

time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted. Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension to the date of payment.

60209. Excusable delay. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 60207, 60250, 60301, 60338, and 60355.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

History.—Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision letter designation (a) before first paragraph, added subdivision letter designation (b) before second paragraph, substituted "Except as provided in subdivision (c), any" for "Any" in subdivision (b), and added subdivision (c).

60210. Excusable delay; reliance on Board advice. (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction that occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, that renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information that the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

60210.5. Relief of spouse. (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment.

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months or quarters subject to the provisions of this part, but shall not apply to any calendar month or quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a supplier entering, removing, or selling taxable diesel fuel, an interstate user, an exempt bus operator, or a highway vehicle operator using taxable diesel fuel to which the understatement is attributable. If neither spouse rendered

substantial services as a supplier, interstate user, exempt bus operator, or highway vehicle operator, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Section 297 of the Family Code, have the same rights, protections, and benefits as provided by this section, and are subject to the same responsibilities, obligations, and duties as imposed by this section, as are granted to and imposed upon spouses.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

History.—Added by Stats. 2007, Ch. 342 (AB 1748), in effect January 1, 2008.

60211. Disaster. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 60207, 60208, 60250, 60302, and 60339.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

History.—Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added "60250" after "Sections 60207, 60208," in the first paragraph. Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, deleted "and" after "60208, 60250" and added ", and 60339" after "60302" in the first paragraph.

60212. Relief of interest. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted "this part" for "Sections 60207 and 60302" after "imposed on a person by" in subdivision (a).

Article 1.1 Payment by Electronic Funds Transfer*

- § 60250. Electronic funds transfer payments.
- § 60251. Relief of penalty.
- § 60252. Definitions.
- § 60253. Electronic filing.

60250. Electronic funds transfer payments. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 60201). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 60301) or Article 3 (commencing with Section 60310), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person

* Article 1.1 was added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.

remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 60207.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, deleted the former last sentence of subdivision (b) which provided “The election shall be operative for a minimum of one year.”

60251. Relief of penalty. If the board finds that a person’s failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 60250. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

60252. Definitions. (a) “Electronic funds transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) “Automated clearinghouse” means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) “Automated clearinghouse debit” means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person’s bank account and crediting the state’s bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state’s bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Section 60250 may be made by Fedwire only if payment cannot, for good

cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

60253. Electronic filing. (a) Any return, report, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

(d) Upon written approval of the board, a person may satisfy the requirements of subdivision (a) by executing and providing to the board a consent and authorization for the Internal Revenue Service to provide to the board under Section 6103 of the Internal Revenue Code, the return filed by the person under Section 48.4101-2 of Title 26 of the Code of Federal Regulations. The board, in its sole discretion, may rescind its approval and require a person to file reports as specified in subdivision (a).

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002.

Article 2. Determination If No Return Made

§ 60301. Determination; failure to file return; penalty.

§ 60302. Interest.

§ 60303. Fraud penalty.

§ 60304. Notice of determination.

60301. Determination; failure to file return; penalty. If any person fails, neglects, or refuses to file the return within the time prescribed by this chapter, the board shall estimate the diesel fuel removals, entries, sales, deliveries, or use for the period for which he or she made no return within the time required. Upon the basis of this estimate, the board shall determine the tax due from the person, and shall add to the tax a penalty of 10 percent thereof. The board may make a determination for more than one period and may make one or more determinations for the same period.

60302. Interest. Each determination so made, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the reporting period for which the amount or any portion thereof should have been returned until the date of payment.

60303. Fraud penalty. If the neglect or refusal of a person to file a return is due to fraud or intent to evade the tax, a penalty of 25 percent of the tax shall be added thereto in addition to the 10-percent penalty provided in Section 60301.

60304. Notice of determination. Promptly after making its determination, the board shall give to the delinquent person written notice of the estimate, including tax, interest, and penalty. The notice shall be given in the manner prescribed in Section 60311 for giving notice of a deficiency determination.

Article 3. Deficiency Determinations

- § 60310. Deficiency determination.
- § 60311. Notice of determination.
- § 60312. Negligence.
- § 60313. Fraud.
- § 60314. Interest.
- § 60315. Limitations; deficiency determinations.
- § 60316. Limitations; deficiency determinations; decedents.
- § 60317. Waiver.

60310. Deficiency determination. If the board is not satisfied with the return made by any person, it may make a deficiency determination of the tax required to be paid by the person based upon information contained in the return or upon any information in the possession of the board. The board may make a determination for more than one period and may make one or more determinations for the same period. When a business is discontinued, a determination may be made at any time thereafter within the period specified in Section 60315, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

60311. Notice of determination. The board shall give the person written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the person at that person's address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation, or mail chute or other facility maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of that delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

60312. Negligence. If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of this part or authorized rules and regulations, a penalty of 10 percent of the amount of the determination shall be added thereto.

60313. Fraud. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade the tax, a penalty of 25 percent of the amount of the determination shall be added thereto.

60314. **Interest.** All deficiency determinations, exclusive of penalty, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the calendar month following the reporting period for which the amount or any portion thereof should have been returned until the date of payment.

60315. **Limitations; deficiency determinations.** Except in the case of fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a deficiency determination shall be given to the person within three years after the last day of the calendar month following the reporting period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later. In the case of a failure to make a return, the notice of determination shall be mailed within eight years after the date the return was due.

60316. **Limitations; deficiency determinations; decedents.** In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

60317. **Waiver.** If before the expiration of the time prescribed in Section 60315 for the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Article 4. Jeopardy Determinations and Weekly Payments

- § 60330. Jeopardy determination.
- § 60331. Interest and penalty.
- § 60332. Petition for redetermination; security.
- § 60333. Administrative hearing.
- § 60334. Weekly returns.
- § 60335. Monthly return period.
- § 60336. Revocation of license.
- § 60337. Immediately due and payable.
- § 60338. Penalty.
- § 60339. Interest.
- § 60340. Service of notice.

60330. **Jeopardy determination.** If the board believes that the collection of any amount of tax imposed under this part will be jeopardized by delay, it shall thereupon make a determination of the amount of tax, noting that fact upon the determination. The amount determined is immediately due and payable.

60331. **Interest and penalty.** If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid within 10 days

after service upon the person of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within 10 days, and the delinquency penalty and interest provided in Article 5 (commencing with Section 60350) shall attach to the amount specified.

60332. Petition for redetermination; security. The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to Article 5 (commencing with Section 60350). That person shall, however, file the petition for redetermination with the board within 10 days after the service upon that person of notice of the determination. At the time of filing the petition for redetermination, the person shall deposit with the board that security as the board may deem necessary to ensure compliance with this part.

60333. Administrative hearing. (a) In accordance with rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

- (1) To establish that the determination is excessive.
- (2) To establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.
- (3) To request the release of all or a part of the property to the person.
- (4) To request a stay of collection activities.

(b) The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. No security need be posted to file the application and to obtain this hearing. However, if the person does not deposit within the 10-day period prescribed in Section 60332 that security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect provisions of Section 60331 relating to the finality date of the determination or to penalty or interest.

60334. Weekly returns. If the board deems it necessary in order to ensure payment to the state of the amount of taxes due from any supplier under this part, it may require the supplier to make returns and payments of taxes on a weekly basis. The supplier shall then file a return each Tuesday showing the total number of gallons of diesel fuel removed, entered or sold by him or her during the week ending the Saturday next preceding, the amount of tax due for that week, and any other information as the board

deems necessary for the proper administration of this article. The return shall be accompanied by a remittance payable to the board for the amount of tax due for the period covered.

60335. Monthly return period. A supplier required to make weekly payments is not relieved of the duty of filing the verified monthly return required by Article 1 (commencing with Section 60201).

60336. Revocation of license. Whenever any supplier who is required to pay tax in weekly installments as provided by Section 60334 fails to make a weekly return or to pay the full amount in accordance with the terms and conditions prescribed by the board, the supplier's license may be revoked forthwith.

60337. Immediately due and payable. If a supplier fails to make a weekly return or to pay any weekly installment of the tax, or any part thereof, pursuant to the requirement imposed upon the supplier under Section 60334, the full amount of the installment becomes immediately due and payable. The board shall thereupon make a jeopardy determination under Section 60330 and the board shall forthwith collect the tax due from the supplier in the manner prescribed by Chapter 6 (commencing with Section 60201) and Chapter 7 (commencing with Section 60401). All provisions of those chapters, where relevant, apply to collections required to be made under this article.

60338. Penalty. If any supplier fails to pay any weekly installment of tax shown to be due by the supplier's weekly return on the Tuesday when required to be paid, a penalty of 5 percent shall be added thereto. In addition, if any weekly installment of tax remains unpaid on the last day of the calendar month following the month during which the last of the removals, entries, or sales occurred on which the weekly installment was levied, a penalty of 10 percent of the installment, exclusive of penalties, shall be added thereto.

The weekly installment shall be deemed not paid or unpaid on any particular day:

(a) If not paid prior to 5 p.m. of that day, when paid in person.

(b) If the envelope in which the remittance is enclosed bears a post office cancellation mark dated later than that day, when paid by mail.

60339. Interest. All jeopardy determinations including those made under Section 60337, exclusive of penalty, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the reporting period for which the amount or any portion thereof should have been returned until the date of payment.

60340. Service of notice. Any notice required by this article may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Article 5. Redeterminations

- § 60350. Petition for redetermination.
- § 60351. Form and content.
- § 60352. Oral hearing.
- § 60353. Decrease or increase of determination.
- § 60354. Finality date of order or decision.
- § 60355. Due date; penalty.
- § 60356. Offsets.

60350. Petition for redetermination. Any person against whom a determination is made by the board under Article 2 (commencing with Section 60301) and Article 3 (commencing with Section 60310) may petition for a redetermination within 30 days after the date the notice thereof is given to him or her. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

60351. Form and content. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

60352. Oral hearing. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the determination and, if the person has so requested in his or her petition, shall grant him or her an oral hearing and shall give 10 days' notice of the time and place of the hearing. Service of notice shall be as prescribed by Section 60173. The board may continue the hearing from time to time as may be necessary.

60353. Decrease or increase of determination. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by Section 60303, 60313, or 60361 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the date the return for the period for which the increase is asserted was due.

60354. Finality date of order or decision. The order or decision of the board upon a petition for redetermination becomes final 30 days after the giving of notice thereof to the person as prescribed by Section 60173.

60355. Due date; penalty. All determinations made by the board under this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto. Payment shall be made in the form of a remittance payable to the board and shall be filed with the board together with a copy of the notice of determination which the board shall furnish to the person for that purpose.

60356. Offsets. In making a determination, the board may offset overpayments for a period or periods, together with interest on the

overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on the underpayments and overpayments shall be computed in the manner set forth in Sections 60314 and 60524.

Article 6. Payment by Unlicensed Persons

- § 60360. Immediate liability for tax.
- § 60361. Penalty.
- § 60361.5. Immediate liability for backup tax.
- § 60362. Seizure and sale of property.
- § 60363. Attorney General action.
- § 60364. Copy of determination.
- § 60365. Cumulative remedies.
- § 60366. Applicable penal provisions.

60360. Immediate liability for tax. If any person becomes a supplier, exempt bus operator, government entity, qualified highway vehicle operator, or interstate user without first securing a license, the tax, and applicable penalties and interest, if any, become immediately due and payable on account of all diesel fuel removed, entered, sold, delivered, or used by him or her.

History.—Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995, added “government entity,” after “exempt bus operator.” Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “user” for “trucker” after “or interstate”. Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added “qualified” after “government entity,” and deleted “end seller,” after “highway vehicle operator”.

60361. Penalty. (a) The board shall forthwith ascertain as best it may the amount of the diesel fuel removed, entered, sold, delivered, or used and shall determine immediately the tax on that amount, adding to the tax a penalty of 25 percent of the amount of tax or five hundred dollars (\$500), whichever is greater, and shall give the unlicensed person notice of this determination as prescribed by Section 60340. However, where the board determines that the failure to secure a license was due to reasonable cause, the penalty may be waived. Sections 60331 and 60332 shall be applicable with respect to the finality of the determination and the right of the unlicensed person to petition for a redetermination.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases the claim for relief.

(b) In any case where the board does not determine an amount of tax due, the unlicensed person shall be subject to a penalty of one hundred dollars (\$100), which penalty shall be immediately due and payable. Each subsequent violation shall increase the penalty amount by one hundred dollars (\$100), up to a maximum penalty of five hundred dollars (\$500). The board shall serve the person with a notice of penalty assessment in the manner prescribed by Section 60340 for service of notice of a deficiency determination. However, if the board finds that the failure of the person to secure a license was due to reasonable cause, the board may waive the

penalty. A person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the request for relief is based.

History.—Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added subdivision designation “(a)”, substituted “60340” for “60173” after “prescribed by Section” in the first sentence of the first paragraph of subdivision (a), and added subdivision (b).

60361.5. Immediate liability for backup tax. (a) Except in the case of a qualified highway vehicle operator, the backup tax imposed under Section 60058 and any applicable penalties and interest shall be immediately due and payable. The board shall forthwith ascertain as best it may the amount of diesel fuel sold, or delivered into the fuel tank of a diesel fuel-powered highway vehicle, or sold and delivered into the fuel tank of a diesel fuel-powered highway vehicle, and shall determine immediately the tax on the amount and shall give the highway vehicle operator/fueler notice of this determination as prescribed by Section 60340. The determination shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the date the backup tax applies until the date of remittance to the state. The provisions of Sections 60331 and 60332 shall be applicable with respect to the finality of the determination and the right of the highway vehicle operator/fueler to petition for a redetermination.

(b) A penalty of 25 percent of the amount of tax or five hundred dollars (\$500), whichever is greater, shall be added to the tax.

(c) If more than one of the penalties specified in this section and Section 60105, 60106.3, or 60503.2 is otherwise applicable, only the penalty totaling the greatest amount shall be imposed, and, the penalty specified in this section may be imposed only if the amount of penalty exceeds any other applicable penalty.

(d) Where the board determines that the sale, delivery into the fuel tank of a diesel fuel-powered highway vehicle, or sale and delivery into the fuel tank of a diesel fuel-powered highway vehicle of untaxed diesel fuel was due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty. A person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which the request for relief is based.

(e) All administrative provisions contained in this part that apply to a supplier shall also be applicable to a highway vehicle operator/fueler.

History.—Added by Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002. Stats. 2003, Ch. 62 (SB 600), effective January 1, 2004, substituted “Sections” for “Section” after “The provisions of” in the last sentence in subdivision (a); substituted “may” for “shall” after “the penalty specified in this section” in subdivision (c).

60362. Seizure and sale of property. The board shall forthwith collect the tax, penalty, and interest due from the unlicensed person by seizure and sale of property in the manner prescribed for the collection of a delinquent monthly tax.

60363. **Attorney General action.** At the request of the board, the Attorney General shall commence and prosecute to final determination an action at law to collect the tax, penalty, and interest, or any part thereof, determined against an unlicensed person.

60364. **Copy of determination.** In the suit, a copy of the jeopardy determination certified by the board shall be prima facie evidence that the unlicensed person is indebted to the state in the amount of the tax, penalties, and interest computed as prescribed by Section 60339.

60365. **Cumulative remedies.** The foregoing remedies of the state are cumulative.

60366. **Applicable penal provisions.** No action taken pursuant to this article relieves the unlicensed person in any way from the penal provisions of this part.

CHAPTER 7. COLLECTION OF TAX

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| Article 1. | Security for Tax. | §§ 60401-60408. |
| 2. | Suit for Tax. | §§ 60421-60423. |
| 3. | Lien of Tax. | §§ 60441-60445. |
| 4. | Warrant for Collection of Tax. | §§ 60451-60453. |
| 5. | Seizure and Sale. | §§ 60461-60464. |
| 6. | Successor Withholding and Liability. | §§ 60471-60474. |
| 7. | Miscellaneous Provisions. | §§ 60491-60493.5. |

Article 1. Security for Tax

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| § 60401. | Security. |
| § 60402. | Notice to creditors. |
| § 60403. | Withholds; prohibitions against transfer or disposal. |
| § 60404. | Withholds; banks. |
| § 60405. | Withholds; liability. |
| § 60406. | Effect of security when business discontinues. |
| § 60407. | Notice of levy. |
| § 60408. | Withholds; earnings. |

60401. **Security.** The board, whenever it deems it necessary to ensure compliance with this part or any rule or regulation adopted under this part, may require any person to deposit with it any security as it may determine appropriate. The amount of the security shall be fixed by the board but shall not be more than three times the estimated average monthly tax liability of the person. The total amount of security shall not be in excess of one million dollars (\$1,000,000) where the person has established to the satisfaction of the board that this security, together with property to which the lien imposed by Section 60445 attaches, is sufficient security to ensure payment of taxes equivalent to three times the estimated average monthly tax liability of the person. The amount of the security may be increased or decreased by the board at any time. Any security in the form of cash or insured deposits in banks and savings and loan institutions shall be held by the board in trust to be used solely in the manner provided for in this section and Section 60406. Any security in the form of a bond or bonds shall be duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful

performance of all the requirements of this part, and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required.

History.—Stats. 1996, Ch. 30, in effect January 1, 1997, substituted “any” for “such” after “deposit with it” in the first sentence and substituted “For any license . . . paid when due,” for “The total amount of security may not be in excess of one million dollars (\$1,000,000)” in the third sentence. Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, substituted “three” for “four” after “shall not be more than” in the second sentence; substituted “The” for “For any license issued pursuant to Sections 60120, 60131, 60141, and 60161, the” before “the person has established”, deleted “the person has established to the satisfaction of the board that all taxes due under this part for the three year period preceding the time the security is fixed were paid when due, when” after “(\$1,000,000) where”, and substituted “three” for “four” after “equivalent to” in the third sentence; and added the seventh sentence. Stats. 2003, Ch. 62 (SB 600), effective January 1, 2004, added “in” after “used solely in the manner provided for” in the fifth sentence.

60402. Notice to creditors. If any person is delinquent in the payment of any obligation imposed under this part, or in the event a determination has been made against a person that remains unpaid, the board may, not later than three years after the payment becomes delinquent, or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the person, or owing any debts to the person. In the case of any state officer, department or agency, the notice shall be given to the officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the Controller.

60403. Withholds; prohibitions against transfer or disposal. After receiving the notice, the persons so notified shall not transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires earlier.

60404. Withholds; banks. All persons so notified shall forthwith after receipt of the notice advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall state the amount, interest and penalty due from the person and shall be delivered or mailed to the branch or office of the bank at which the deposit is carried or at which such credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall be effective with respect to an amount not in excess of two times the amount, interest and penalty due from the person.

60405. Withholds; liability. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition

of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he or she shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given if solely by reason of that transfer or disposition the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

60406. Effect of security when business discontinues. If, at the time a person ceases to operate under this part, the board holds a security pursuant to Section 60401 in the form of cash, or insured deposits in banks or savings and loan institutions, the security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the person ceases to operate under this part.

Text of section operative through June 30, 2001

60407. Notice of levy. (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a person liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that person, or the amount of any liability incurred by him or her under this part, and to transmit the amount withheld to the board at those times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, "payment" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. "Payment" does include any of the following:

(1) Any payment due for services of an independent contractor, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Any payment or credit due or becoming due periodically as the result of an enforceable obligation to the person liable for the tax.

(3) Any other payment or credit due or becoming due the person liable as the result of a written or oral contract for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted “payments, credits, or other payments,” for “credits” after “their control, any” and substituted “those” for “such” after “the board at” in the first sentence, and added “The notice of . . . in subdivision (b).” as the second sentence of subdivision (a); substituted “sum of both . . . to the expiration” for “amount of each payment due or becoming due to the person liable during the period” after “(2) The” in subdivision (c); and added “or” after “residuals, patent rights,” in subparagraph (1) of subdivision (d).

Text of section operative July 1, 2001

60407. **Notice of levy.** (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a person liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that person, or the amount of any liability incurred by him or her under this part, and to transmit the amount withheld to the board at those times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person’s possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, “payment” does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. “Payment” does include any of the following:

(1) Any payment due for services of an independent contractor, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Any payment or credit due or becoming due periodically as the result of an enforceable obligation to the person liable for the tax.

(3) Any other payment or credit due or becoming due the person liable as the result of a written or oral contract for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted “payments, credits, or other payments,” for “credits” after “their control, any” and substituted “those” for “such” after “the board at” in the first sentence, and added “The notice of . . . in subdivision (b).” as the second sentence of subdivision (a); substituted “sum of both . . . to the expiration” for “amount of each payment due or becoming due to the person liable during the period” after “(2) The” in subdivision (c); and added “or” after “residuals, patent rights,” in subparagraph (1) of subdivision (d). Stats. 1999, Ch. 991 (SB 45), substituted “paragraph (29) of subdivision (a) of Section 9102” for “Section 9105” after “as defined in” in subdivision (d).

60408. Withholds; earnings. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines receiving information from a supplier or other person liable for any amount under this part that the person’s employer withheld earnings for taxes pursuant Section 60407 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board’s determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person’s account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period: (1) An amount equal to the amount determined by the board under subdivision (a). (2) The earlier of the time the credit is applied to the person’s account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

Article 2. Suit for Tax

§ 60421. Legal actions to collect deficiencies.

§ 60422. Attachment.

§ 60423. Prima facie evidence.

60421. Legal actions to collect deficiencies. At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, or within the period during which a lien is in force as the result of the filing of a notice of state tax lien under Section 7171 of the Government Code, the board may bring an action in the courts of this state, of any other state, or of the United States in the name of the state to collect the amount delinquent together with penalties and interest.

The Board's Interpretation of "Due and Payable" under Revenue and Taxation Code Sections 8971 and 60421 is Correct.—Cool Fuel, Inc., a licensed fuel wholesaler, was investigated by the Board and found liable for over \$2.5 million for unpaid monthly use fuel taxes for diesel fuel sold in 1993. Cool Fuel requested a re-determination and a hearing before the Board, but before the Board issued a final determination, Cool Fuel filed for chapter 11 bankruptcy protection. The Board filed a proof of claim in the bankruptcy case for \$2,606,570 in disputed taxes and interest. Cool Fuel objected to the Board's claim on the basis that it was barred by the three-year statute of limitations provided by Revenue and Taxation Code Sections 8971 and 60421. The Board argued that Revenue and Taxation Code Sections 8854 and 60355 define "due and payable" under Sections 8971 and 60421 as upon a final determination. Consequently, the Sections 8971 and 60421 time limitation period had not yet even begun and the Board's claim was not time barred. The Ninth Circuit held that the Board's interpretation was correct. Therefore, the amount of tax due pursuant to a Board determination is "due and payable" when the determination becomes final. *Cool Fuel Inc. vs. Board of Equalization* (In re Cool Fuel, Inc.) (2000) 210 F.3d 999. Subsequently, the Board's claim was dismissed on summary judgment. On appeal, the Ninth Circuit reversed and remanded with instructions to enter judgment in favor of the Board. In re Cool Fueling. (2004) 117 Fed. Appx. 514, unpublished. On appeal, the Bankruptcy Appeal Panel affirmed. BAP No. CC-05–1121-KPaB, June 21, 2006.

60422. Attachment. In the action a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

60423. Prima facie evidence. In the action a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the tax of the delinquency of the amount of tax, interest, and penalty set forth, and of compliance by the board with all provisions of this part in relation to the computation and levy of the tax.

Article 3. Lien of Tax

§ 60441. Lien.

§ 60442. Time of attachment.

§ 60443. Removal of lien.

§ 60444. Priority.

§ 60445. Liens; perfection and enforceability of.

60441. **Lien.** Notwithstanding Section 60445, the tax, interest, and penalties are a lien upon and have the effect of an execution duly levied against any qualified motor vehicle in which diesel fuel taxable under this part is used and against any personal property of the interstate user.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “user” for “trucker” after “of the interstate”.

60442. **Time of attachment.** The lien arising under Section 60441 attaches at the time a qualified motor vehicle is operated in this state through the use of diesel fuel taxable under this part.

60443. **Removal of lien.** The lien arising under Section 60441 shall not be removed until the tax, interest, and penalties are paid or the qualified motor vehicle or other property subject to the lien is sold in payment thereof.

60444. **Priority.** The lien arising under Section 60441 as to the tax and interest, but exclusive of penalties, upon personal property is paramount to all private liens or encumbrances of whatever character, and to the rights of any conditional vendor or any other holder of the legal title, in or to any qualified motor vehicle that is operated in this state through the use of diesel fuel taxable under this part.

60445. **Liens; perfection and enforceability of.** (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. That lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent.

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board.

(3) For amounts determined under Section 60330 (pertaining to jeopardy assessments), the date the notice of the board’s finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

Article 4. Warrant for Collection of Tax

§ 60451. Warrant; time of issuing.

§ 60452. Fees and expenses.

§ 60453. Collection of fees.

60451. **Warrant; time of issuing.** At any time within three years after any person is delinquent in the payment of any amount required by this part to be paid or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and

shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to any sheriff” in the second sentence.

60452. Fees and expenses. The board may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to the sheriff” in the first sentence.

60453. Collection of fees. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him or her by virtue of the warrant or in any other manner provided in this part for the collection of the tax.

Article 5. Seizure and Sale

- § 60461. Seizure and sale.
- § 60462. Notice of sale.
- § 60462.5. Seizure and sale; qualified motor vehicle.
- § 60462.6. Notice of sale; qualified motor vehicle.
- § 60463. Conduct of sale.
- § 60464. Disposition of proceeds.

60461. Seizure and sale. Whenever any person is delinquent in the payment of the obligations imposed under this part, the board or its authorized representative may seize any property, real or personal, subject to the lien of the tax and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

60462. Notice of sale. Notice of the sale and the time and place thereof shall be given in writing at least 20 days before the date set for the sale to the delinquent person and to all persons who have an interest of record in the property seized. The notice shall be personally served or enclosed in an envelope addressed to the person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including tax, penalties, interest, and costs, the name of the person, and the further statement that unless the amount is paid on or before the time fixed in the notice of sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

60462.5. Seizure and sale; qualified motor vehicle. The board may seize any qualified motor vehicle subject to the lien of the tax and thereafter sell the qualified motor vehicle at private sale to pay the tax due, together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

60462.6. Notice of sale; qualified motor vehicle. Notice of the sale shall be given in writing to the delinquent person and to all persons who have an interest of record in the qualified motor vehicle at least 10 days before the date set for the sale of the qualified motor vehicle. The notice shall be enclosed in an envelope addressed to the person at his or her last known residence or place of business and, in the case of any person who has an interest of record in the qualified motor vehicle, addressed to the person at his or her last known residence or place of business. It shall be deposited in the United States mail, postage prepaid. The notice shall contain a description of the qualified motor vehicle to be sold, a statement of the amount due, interest, penalties, and costs, the name of the person, and the further statement that unless the tax due, interest, penalties, and costs are paid within 10 days the qualified motor vehicle will be sold at private sale.

60463. Conduct of sale. At any sale the board or its authorized agent shall sell the property in accordance with the law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the taxpayer.

60464. Disposition of proceeds. If upon any sale the moneys received exceed the amount due to the state from the taxpayer, the board shall return the excess to the taxpayer and obtain his or her receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest or lien, the board shall withhold payment of any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If for any reason the receipt of the taxpayer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the taxpayer, his or her heirs, successors, or assigns.

History.—Stats. 1996, Ch. 860, in effect January 1, 1997, substituted “to the excess moneys” for “thereto” after “the respective parties” in the second sentence and substituted “Controller” for “Treasurer” after “moneys with the” in the last sentence.

Article 6. Successor Withholding and Liability

- § 60471. Successor withholding.
- § 60472. Successor liability; certificate of tax clearance.
- § 60473. Certificate of tax clearance.
- § 60474. Notice of successor liability.

60471. **Successor withholding.** If any person liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successor or assign shall withhold from the purchase price an amount sufficient to cover that amount until the former owner produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

60472. **Successor liability; certificate of tax clearance.** (a) If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price valued in money.

(b) (1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice to the purchaser at his or her address as it appears on the records of the board of the amount that is required to be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) shall release the purchaser from any further obligation to withhold from the purchase price under this article. The last day upon which the obligation of the successor may be enforced shall be no later than three years after the date the board is notified of the purchase of the business or stock of goods.

History.—Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, added “from” after “obligation to withhold” in the first sentence of, and substituted “The last day . . . stock of goods.” for “The time within which the obligation of the successor may be enforced shall begin to run at the time the person sells out his or her business or stock of goods or at the time that the determination against the person becomes final, whichever event occurs later.” in the second sentence of, subdivision (c).

60473. **Certificate of tax clearance.** The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board.

60474. **Notice of successor liability.** The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 60350) of Chapter 6. The notice shall become final and the

amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. This chapter, with respect to the collection of any amount required to be paid under this part, shall apply when the notice becomes final.

Article 7. Miscellaneous Provisions

- § 60491. Remedies.
- § 60492. Furnishing of partnership agreement.
- § 60493. Installment payment agreement.
- § 60493.5. Installment payment annual statement.

60491. Remedies. The remedies of the state provided for in this chapter are cumulative, and no action taken by the board constitutes an election by the state to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

60492. Furnishing of partnership agreement. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.

60493. Installment payment agreement. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies

with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 60355.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision (e).

60493.5. Installment payment annual statement. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 60493 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

CHAPTER 8. OVERPAYMENTS AND REFUNDS

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| Article 1. | Refunds on Certain Sales and Uses. §§ 60501–60512. |
| 2. | Claim for Refund. §§ 60521–60525. |
| 3. | Suit for Refund. §§ 60541–60548. |
| 4. | Recovery of Erroneous Refunds. § 60561–60564. |
| 5. | Cancellations. § 60581. |

Article 1. Refunds on Certain Sales and Uses

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| § 60501. | Overpayments; credits and refunds. |
| § 60502. | Refund; ultimate vendor. |
| § 60502.1. | Prohibition of tax reimbursement. |
| § 60502.2. | Tax; exempt bus operators. |
| § 60503. | Form of exemption certificate. |
| § 60503.1. | Misuse of exemption certificate. |
| § 60503.2. | Punishments. |
| § 60504. | Trace amounts of dyed fuel. |
| § 60505. | Refund. |
| § 60505.5. | Refund; electronic media. |
| § 60506. | Examination of books and records. |
| § 60507. | Claim; limitation period. |
| § 60508. | Credit allowed on supplier's return. |
| § 60508.1. | Credit; consulate officers and consulate employees. <u>[Repealed.]</u> |
| § 60508.2. | Credit; ultimate purchaser. <u>[Repealed.]</u> |
| § 60508.3. | Credit; government entity. |
| § 60508.4. | Credit in lieu of refund; tax-paid fuel removed at rack. <u>[Repealed.]</u> |
| § 60509. | Credit; exports. <u>[Repealed.]</u> |
| § 60510. | No refund for spillage. <u>[Repealed.]</u> |
| § 60511. | Interest. |
| § 60512. | Claim payment deadline. |

60501. Overpayments; credits and refunds. Persons who have paid a tax for diesel fuel lost, sold, or removed as provided in paragraph (4) of subdivision (a), or used in a nontaxable use, other than on a farm for farming purposes or in an exempt bus operation, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax.

(a) A claim for refund with respect to diesel fuel is allowed under this section only if all of the following apply:

- (1) Tax was imposed on the diesel fuel to which the claim relates.
- (2) The claimant bought or produced the diesel fuel and did not sell or resell it in this state except as provided in paragraph (4).

(3) The claimant has filed a timely claim for refund that contains the information required under subdivision (b) and the claim is supported by the original invoice or original invoice facsimile retained in an alternative storage media showing the purchase. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(4) The diesel fuel was any of the following:

(A) Used for purposes other than operating motor vehicles upon the public highways of the state.

(B) Exported for use outside of this state. Diesel fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the diesel fuel becomes subject to tax as an import under the laws of the destination state.

(C) Used in any construction equipment that is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(D) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture and with respect to the use of the highway the claimant pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, the United States Department of Agriculture.

(E) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency when operated by it over any highway constructed and maintained by the United States or any department or agency thereof within a military reservation in this state. If the motor vehicle is operated both over the highway and over a public highway outside the military reservation in a continuous trip the tax shall not be refunded as to that portion of the diesel fuel used to operate the vehicle over the public highway outside the military reservation.

Nothing contained in this section shall be construed as a refund of the tax for the use of diesel fuel in any motor vehicle operated upon a public highway within a military reservation, which highway is constructed or maintained by this state or any political subdivision thereof.

As used in this section, "military reservation" includes any establishment of the United States Government or any agency thereof used by the Armed Forces of the United States for military, air, or naval operations, including research projects.

(F) Sold by a supplier and which was sold to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (6) of subdivision (a) of Section 60100 if the supplier had sold the diesel fuel directly to the consulate officer or consulate employee.

(G) Lost in the ordinary course of handling, transportation, or storage.

(H) (i) Sold by a person to the United States and its agencies and instrumentalities under circumstances that would have entitled that person to

an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(ii) Sold by a supplier and which was sold by credit card to the United States and its agencies and instrumentalities under circumstances which would have entitled the supplier to an exemption under Section 60100 if the supplier had sold the diesel fuel directly to the United States and its agencies and instrumentalities.

(I) Sold by a person to a train operator for use in a diesel-powered train or for other off-highway use under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(J) Removed from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.

(b) Each claim for refund under this section shall contain the following information with respect to all of the diesel fuel covered by the claim:

(1) The name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(2) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(3) A statement, which may appear on the invoice, original invoice facsimile, or similar document, by the person that sold the diesel fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(4) The total amount of diesel fuel covered by the claim.

(5) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (4) of subdivision (a).

(6) If the diesel fuel covered by the claim was exported, a statement that the claimant has the proof of exportation.

(c) Each claim for refund under this section shall be made on a form prescribed by the board and shall be filed for a calendar year. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars (\$750) is refundable under this section with respect to diesel fuel used or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the board may require the filing of claims for refund for other than yearly periods.

History.—Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995, added paragraph (G) to subdivision (a). Stats. 1995, Ch. 555, in effect January 1, 1996, added subdivision (c). Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, added the second sentence to paragraph (3) of, substituted “Lost in the ordinary course of handling, transportation, or storage.” for “Any person who sells diesel fuel to the United States and its agencies and instrumentalities under circumstances that would have entitled him or her to an exemption from the payment of diesel fuel tax under Section 60100 had he or she been the supplier of this diesel fuel.” in paragraph (G) of, and added paragraphs (H) and (I) to, subdivision (a). Stats. 1998, Ch. 350 (SB 2231), in effect January 1, 1999, added “lost, sold as provided in paragraph (4) of subdivision (a), or” after “for diesel fuel” in the first paragraph; added “except as provided in paragraph (4) of subdivision (a)” after “in this state” in subparagraph (2) of subdivision (a); and added “of” after “respect to all” in subdivision (b). Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added “, or removed” after “fuel lost, sold” in the first paragraph, and added subparagraph (J) to subdivision (a)(4). Stats. 2003, Ch. 316 (AB 1744), effective January 1, 2004, added “or original invoice facsimile retained in an alternative storage media” after “is supported by the original invoice” in the first sentence of subdivision (a)(3); substituted “Government” for “government” after “establishment of the United States” in the third paragraph of subdivision (a)(4)(E); added “original invoice facsimile,” after “which may appear on the invoice” in subdivision (b)(3). Stats. 2009, Ch. 545 (AB 1547), in effect January 1, 2010, deleted “of subdivision (a)” after “provided in paragraph (4)” in paragraph (2) of, substituted “Armed

Forces” for “armed forces” in paragraph (4)(E) of, added “and which was sold” after “sold by a supplier” and before “to any consulate officer” in paragraph (4)(F) of, and added subparagraph heading (i), and added subparagraph (ii), to paragraph (4)(H) of, subdivision (a).

60502. Refund; ultimate vendor. (a) Any ultimate vendor who has paid a tax on diesel fuel sold to an ultimate purchaser for use on a farm for farming purposes or use in an exempt bus operation shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax.

(b) A claim for refund with respect to diesel fuel is allowed under this section only if all of the following apply:

(1) Tax was imposed on the diesel fuel to which the claim relates.

(2) The claimant sold the diesel fuel to the ultimate purchaser for use on a farm for farming purposes or for use in an exempt bus operation.

(3) The claimant is a registered ultimate vendor.

(4) The claimant has filed a timely claim for refund that contains the information required under subdivision (c) and the claim is supported by the original invoice showing the purchase. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(c) Each claim for refund under this section shall contain the following information with respect to all the diesel fuel covered by the claim:

(1) The claimant’s permit number.

(2) The name, address, telephone number, and permit number of each person that sold the diesel fuel to the claimant and the date of the purchase.

(3) The name, address, telephone number, and federal taxpayer identification number of each farmer or the permit number of each exempt bus operator that bought the diesel fuel from the claimant and the number of gallons that the claimant sold to each.

(4) A statement that the diesel fuel covered by the claim did not contain visible evidence of dye.

(5) The total amount of diesel fuel covered by the claim.

(6) A statement that the claimant has not included the amount of the tax in its sales price of the diesel fuel and has not collected the amount of tax from its buyer.

(7) A statement that the claimant has in its possession an unexpired exemption certificate described in Section 60503 and the claimant has no reason to believe any information in the certificate is false.

(8) A statement that the amounts claimed have not been previously refunded to the claimant and that there are no other claims outstanding for the amounts included in the current claim.

(d) Each claim for refund under this section shall be made on a form prescribed by the board and shall be for an amount of not less than two hundred dollars (\$200) and for a period of not less than one week.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, added subdivision (d). Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, added the second sentence to paragraph (4) of subdivision (b) and added paragraph (8) to subdivision (c).

60502.1. Prohibition of tax reimbursement. No tax shall be included in the sales price or on the sales invoice by the ultimate vendor on diesel fuel sold to an ultimate purchaser.

60502.2. Tax; exempt bus operators. Notwithstanding the refund provided for by Section 60502 and the exemption provided for by subparagraph (B) of paragraph (5) of subdivision (a) of Section 60100, any exempt bus operation using diesel fuel on which the tax has been refunded under Section 60502 or exempt from tax under subparagraph (B) of paragraph (5) of subdivision (a) of Section 60100 shall, for the privilege of operating buses on state highways and freeways, make a payment equal to one cent (\$0.01) for each gallon of the refunded or exempt diesel fuel used. The payments required by this subdivision shall be paid to the State Board of Equalization in the manner prescribed by the board, and the payments shall be treated as a tax for all purposes of this part.

60503. Form of exemption certificate. (a) The certificate to be provided to the ultimate vendor consists of a statement that is signed under penalty of perjury by a person with authority to bind the buyer. A new certificate shall be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

- (1) The date one year after the effective date of the certificate.
- (2) The date a new certificate is provided to the seller.

(b) An exemption certificate for diesel fuel used on a farm for farming purposes or for diesel fuel used in an exempt bus operation shall contain that information and be in the form as the board may prescribe.

History.—Stats. 1998, Ch. 350 (SB 2231), in effect January 1, 1999, deleted “(which may be not earlier than the date it is signed)” after “of the certificate” in subparagraph (1) of subdivision (a); substituted “An exemption certificate . . . board may prescribe.” for “The certificate for a farmer is the “CERTIFICATE OF FARMER OR STATE OR LOCAL GOVERNMENT UNIT” required by the Internal Revenue Service.” in subdivision (b); and deleted subdivision (c) which read: “The certificate for an exempt bus operator is a copy of the exempt bus operator’s license issued by the board.”

60503.1. Misuse of exemption certificate. If a purchaser gives a Section 60503 exemption certificate to an ultimate vendor to the effect that the diesel fuel purchased will be used on a farm for farming purposes or in an exempt bus operation, and sells the diesel fuel or uses the diesel fuel in some other manner or for some other purpose, the purchaser will be liable for payment of the tax under Chapter 2 (commencing with Section 60050) of this part. The tax, applicable penalties, and interest shall become due and payable and shall be ascertained and determined in the same manner as the backup tax under Section 60361.5.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, deleted “as if the purchaser were a supplier of the diesel fuel at the time of that sale or use” after “Section 60050) of this part” in the first sentence, and added the second sentence.

60503.2. Punishments. (a) Any person, including any officer or employee of a corporation, who gives a Section 60503 exemption certificate for diesel fuel that he or she knows at the time of purchase is not to be used by him or her or the corporation on a farm for farming purposes or in an exempt bus operation, for the purpose of evading payment to the ultimate vendor of the amount of the tax applicable to the transaction, is guilty of

either a misdemeanor punishable as provided in Section 60706 or a felony punishable as provided in Section 60707.

(b) Any person, including any officer or employee of a corporation, who gives an exemption certificate for diesel fuel pursuant to Section 60503 that he or she knows at the time of purchase is not to be used by him or her or the corporation on a farm for farming purposes or in an exempt bus operation, is liable to the state for the amount of tax that would be due if he or she had not given that certificate. In addition to the tax, the person shall be liable to the state for a penalty of 25 percent of the tax or one thousand dollars (\$1,000), whichever is greater, for each certificate issued for personal gain or to evade the payment of taxes.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, substituted “one thousand dollars (\$1,000),” for “five hundred dollars (\$500)” and substituted “certificate issued” for “purchase made” after “for each”, in the second sentence of subdivision (b).

60504. Trace amounts of dyed fuel. For the purpose of refund claims filed pursuant to this article, diesel fuel containing a de minimis quantity of dye shall not be considered diesel fuel containing visible evidence of dye.

60505. Refund. The board, upon the presentation of the claim and the invoice, shall cause to be paid to the claimant from the taxes collected under this part an amount equal to the taxes collected on the diesel fuel with respect to which the refund is claimed under this article. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

History.—Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, added the second sentence.

60505.5. Refund; electronic media. The claim for refund forms prescribed in subdivision (c) of Section 60501 and subdivision (d) of Section 60502 may include, but not be limited to, electronic media. The claim for refund forms shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Added by Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003.

60506. Examination of books and records. In order to establish the validity of any claim, the board may, upon demand, examine the books and records of the claimant for that purpose. The failure of the claimant to accede to that demand constitutes a waiver of any right to the refund claimed on account of the transactions questioned.

60507. Claim; limitation period. All applications for refund provided under this article shall be filed within three years from the date of the purchase of the diesel fuel or, if the tax was not invoiced at the time of the purchase of the diesel fuel, the application for refund shall be filed within six months after the receipt of an invoice for the tax, whichever period expires later. Any application filed after the time prescribed shall not be considered for any purpose by the board, the Treasurer, or the state.

History.—Stats. 2003, Ch. 605 (SB 1060), effective January 1, 2004, added “or, if the tax was not invoiced . . . whichever period expires later” after “date of the purchase of the diesel fuel” in the first sentence.

60508. Credit allowed on supplier's return. In lieu of the collection and refund of the tax on tax-paid diesel fuel exported, removed, sold, or used by a supplier in a manner that would entitle the supplier to claim a refund under this article, credit may be given the supplier upon the supplier's tax return and the determination of the amount of the supplier's tax shall be in accordance with any rules and regulations the board may prescribe.

History.—Stats. 2009, Ch. 545, in effect January 1, 2010, added “tax-paid” after “the tax on” and before “diesel fuel”, added “exported, removed, sold, or” after “diesel fuel” and before “used by a”, substituted “a” for “the” after “supplier in” and after “manner”, substituted “that” for “as” after “a manner” and before “would entitle”, substituted “the supplier” for “a purchaser” after “would entitle” and before “to claim”, added “a” after “to claim” and before “refund under this article”, and added “shall be in accordance with any rules and regulations the board may prescribe” to the end of the paragraph.

60508.1. Credit; consulate officers and consulate employees. [Repealed by Stats. 2009, Ch. 545 (AB 1547), in effect January 1, 2010.]

60508.2. Credit; ultimate purchaser. [Repealed by Stats. 2009, Ch. 545 (AB 1547), in effect January 1, 2010.]

60508.3. Credit; government entity. In lieu of the refund of tax on diesel fuel used by a government entity in the manner as would entitle a government entity to claim a refund under this article, credit may be given to the government entity upon the government entity's tax return and the demonstration of the amount of the government entity's tax.

History.—Added by Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995.

60508.4. Credit in lieu of refund; tax-paid fuel removed at rack. [Repealed by Stats. 2009, Ch. 545 (AB 1547), in effect January 1, 2010.]

60509. Credit; exports. [Repealed by Stats. 2009, Ch. 545 (AB 1547), in effect January 1, 2010.]

60510. No refund for spillage. [Repealed by Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997.]

60511. Interest. Interest shall be paid upon any refund of tax at the modified adjusted rate per month established pursuant to Section 6591.5 from the first day of the calendar month following the day a properly completed claim for refund was received by the board on any claim that has not been paid within 20 calendar days of the receipt of a properly completed claim form by the board.

The interest shall be paid to the last day of the month following the date upon which the claim is approved by the board.

No interest shall be granted on credits taken on tax returns.

History.—Stats. 1997, Ch. 76 (SB 612), in effect July 16, 1997, substituted “first day of . . . by the board” for “last day of the month following the day the diesel was purchased” after “6591.5 from the” in the first paragraph.

60512. Claim payment deadline. (a) A refund filed pursuant to Section 60502 shall be paid to the claimant within 20 calendar days of the receipt of a claim for refund by the board.

(b) Notwithstanding subdivision (a), the claim for refund must be submitted on a properly completed form or in a substantially similar format, as prescribed by the board.

History.—Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995.

Article 2. Claim for Refund

- § 60521. Credits and refunds.
- § 60521.5. Excess tax reimbursement.
- § 60522. Credits and refunds; claim; limitation periods.
- § 60522.1. Claim limitation; financially disabled.
- § 60522.2. Overpayments from levies or liens.
- § 60523. Form and content of claim.
- § 60524. Interest.
- § 60525. Disallowance of interest.

60521. Credits and refunds. If the board determines that any amount not required to be paid under this part has been paid by any person to the state, the board shall set forth that fact in its records and certify the amount paid in excess of the amount legally due and the person by whom the excess was paid to the board or from whom it was collected. The excess amount paid or collected shall be credited on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall either be refunded to the person, or his or her successors, administrators, executors, or assigns, or, if authorized by the board, deducted by the person from any amounts to become due from him or her under this part.

For any amount exceeding fifty thousand dollars (\$50,000), the board's proposed determination under this section shall be available as a public record for at least 10 days prior to the effective date of the determination.

History.—Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995, added "government entity," after "exempt bus operator," in the first sentence of the first paragraph. Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "user" for "trucker" after "supplier, interstate" in the first paragraph. Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, substituted "to the state" for "that is a licensed supplier, interstate user, exempt bus operator, government entity, highway vehicle operator, or end seller" after "paid by any person" in the first sentence of the first paragraph.

60521.5. Excess tax reimbursement. When an amount represented by a person who is a taxpayer under this part to a customer as constituting reimbursement for taxes due under this part is computed upon an amount that

is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not taxable or is in excess of the taxable amount, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

60522. Credits and refunds; claim; limitation periods. (a) Except as provided in subdivision (b), no refund under Section 60521 shall be approved by the board after three years from the last day of the month following the reporting period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 60301), Article 3 (commencing with Section 60310), or Article 4 (commencing with Section 60330) of Chapter 6, after six months from the date the determinations became final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of the period unless a claim for credit is filed with the board within that period or unless the claim relates to a period for which a waiver has been given pursuant to Section 60317.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 60317 if a claim therefor is filed with the board before the expiration of the period agreed upon.

60522.1. Claim limitation; financially disabled. (a) The limitation period specified in Section 60522 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any

claim for refund that (without regard to this section) is barred by the operation or rule of law, including *res judicata*, as of the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

60522.2. Overpayments from levies or liens. Notwithstanding Section 60522, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.

60523. Form and content of claim. The claim shall be in writing and shall state the specific grounds upon which it is founded.

60524. Interest. Interest shall be paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5 from the first day of the calendar month following the period during which the overpayment is made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “first day of the calendar month” for “last day of the month” after “6591.5 from the” in the first paragraph; and added “calendar” after “day of the” in subdivision (a). Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, deleted “reporting” after “month following the” in the first sentence of the first paragraph.

60525. Disallowance of interest. (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

History.—Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation “(a)” and added subdivision (b).

Article 3. Suit for Refund

- § 60541. Enjoining collection forbidden.
- § 60542. Necessity of refund claim.
- § 60543. Action for refund; limitation.
- § 60544. Refund claim not acted on.
- § 60545. Failure to bring timely suit.
- § 60546. Credit or refund.
- § 60547. Interest.
- § 60548. Judgment for assignee forbidden.

60541. **Enjoining collection forbidden.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this part of any tax or other amounts required to be collected or to prevent or enjoin the revocation of any permit issued under this part or any other action whereby it is sought to enforce the payment of any tax or other amounts required to be paid.

60542. **Necessity of refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

60543. **Action for refund; limitation.** Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

60544. **Refund claim not acted on.** If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for recovery of the whole or any part of the amount claimed as an overpayment.

60545. **Failure to bring timely suit.** Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the state on account of any alleged overpayment.

60546. **Credit or refund.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any amounts due from the plaintiff under this part, Part 2 (commencing with Section 7301), and Part 3 (commencing with Section 8601), and the balance of the judgment shall be refunded to the plaintiff.

60547. **Interest.** In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5 upon the amount found to have been illegally collected from the date of payment thereof to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

60548. **Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the tax or by any person other than the person who paid the tax.

Article 4. Recovery of Erroneous Refunds

- § 60561. Erroneous refunds; action.
- § 60562. Place of trial.
- § 60563. Rules of procedure, etc.
- § 60564. Interest on erroneous refunds.

60561. Erroneous refunds; action. (a) The board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 3 (commencing with Section 60310) or Article 4 (commencing with Section 60330) of Chapter 6. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted “, the board may . . . its discretion issue” for “in recovering the erroneous refunds or credits, the board in its discretion, may” after “to subdivision (a)”, added “deficiency” after “of fraud, the”, and substituted “by the board . . . date of credit” for “within three years from the last day of the month following the reporting period in which the board certifies that the amount collected was in excess of the amount legally due”, in subdivision (b).

Note.—SEC. 61. of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

60562. Place of trial. In any action brought pursuant to subdivision (a) of Section 60561, the court may, with the consent of the Attorney General, order a change in the place of trial.

History.—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

60563. Rules of procedure, etc. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 60561, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

History.—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

60564. Interest on erroneous refunds. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 60561, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 60561 on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

Article 5. Cancellations

§ 60851. Cancellation of determination; procedure

60581. Cancellation of determination; procedure. If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records and certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made. For any amount exceeding fifty thousand dollars (\$50,000), the board's proposed determination under this section shall be available as a public record for at least 10 days prior to the effective date of the determination.

CHAPTER 9. ADMINISTRATION

Article 1. Administration. §§ 60601–60610.

2. The California Taxpayers' Bill of Rights. §§ 60621–60637.

Article 1. Administration

§ 60601. Duty and authority of board.

§ 60602. Hiring of employees.

§ 60603. Inspections by board.

§ 60604. Records.

§ 60605. Information to retain.

§ 60606. Examination of books and records by board.

§ 60607. Conferences as part of administrative duties.

§ 60608. Information sharing.

§ 60609. Information confidential; divulging forbidden.

§ 60609.5. Information confidential; tax preparer.

§ 60610. Certificate of notice.

60601. Duty and authority of board. The board shall enforce this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

60602. Hiring of employees. The board may employ attorneys, accountants, auditors, investigators, and other expert and clerical assistance necessary for the efficient administration of this part.

60603. Inspections by board. (a) Officers or employees of the state, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any place and to conduct inspections in accordance with paragraphs (1) to (6), inclusive.

(1) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(2) Inspections may be at any place at which taxable diesel fuel is or may be produced or stored or at any inspection site where evidence of activities involving evasion may be discovered. These places may include, but are not limited to, any terminal, any diesel fuel storage facility that is not a terminal, any retail diesel fuel facility, or any designated inspection site.

(3) A designated inspection site is any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the state or the Internal Revenue Service to be used as a diesel fuel inspection site. A designated inspection site shall be identified as a diesel fuel inspection site.

(4) Officers or employees may physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of diesel fuel, diesel fuel dyes, or diesel fuel markers. Inspection may also be made of any equipment used for, or in connection with, production, storage, or transportation of diesel fuel, diesel fuel dyes, or diesel fuel markers. This includes any equipment used for the dyeing or marking of diesel fuel. This includes the books and records kept to determine tax liability.

(5) Officers or employees may detain any vehicle, train, or vessel for the purpose of inspecting its fuel tanks and storage tanks. Detainment will be either on the premises under inspection or at a designated inspection site. Detainment may continue for a reasonable period of time as is necessary to determine the amount and composition of the diesel fuel.

(6) Officers or employees may take and remove samples of diesel fuel in reasonable quantities as necessary to determine its composition.

(b) Any person that refuses to allow an inspection may be fined one thousand dollars (\$1,000) for each refusal. This penalty is in addition to any other penalty or tax that may be imposed upon that person or any other person liable for tax or penalty.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, substituted “or may be” for “(or may be)” after “taxable diesel fuel is” in the first sentence of subdivision (a)(2), and added “state or the” after “location designated by the” in the first sentence of subdivision (a)(3).

60604. Records. Every interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/fueler, train operator, pipeline operator, vessel operator, and every person dealing in, removing, transporting, or storing diesel fuel in this state shall keep those records, receipts, invoices, and other pertinent papers with respect thereto in that form as the board may require. Failure to maintain records will constitute a misdemeanor punishable as provided in Section 60706.

History.—Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995, added “government entity” after “exempt bus operator;” in the first sentence. Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “user” for “trucker” after “Every interstate” in the first sentence. Stats. 2003, Ch. 605 (SB 1060), effective January 1, 2004, added “qualified” after “ultimate vendor,” “highway vehicle operator/refueler,” after “highway vehicle operator;,” and “pipeline operator, vessel operator;” after “train operator” in the first sentence. Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, substituted “operator/fueler” for “operator/refueler” after “operator, highway vehicle”.

60605. Information to retain. (a) Each terminal operator shall keep the following information with respect to each rack removal of diesel fuel at each terminal it operates:

(1) The bill of lading or other shipping document.

(2) The record of whether the diesel fuel was dyed in accordance with the United States Environmental Protection Agency or Internal Revenue Service requirements.

- (3) The volume and date of the removal.
- (4) The identity of the position holder or position holder's customer.
- (5) The identity of the person, such as a common carrier, that physically received the fuel.

(6) Any other information required by the Internal Revenue Service pursuant to Section 48.4101-1 of Title 26 of the Code of Federal Regulations.

(b) The terminal operator shall maintain the information described in this section at the terminal from which the removal occurred for at least three months after the removal to which it relates. Thereafter, the terminal operator shall retain the information at a location controlled by the terminal operator for at least four more years.

History.—Stats. 2001, Ch. 429 (AB 309), in effect January 1, 2002, added paragraph (5) to subdivision (a) and renumbered former paragraph (5) as (6), and added the second sentence to subdivision (b).

60606. Examination of books and records by board. The board or its authorized representative may examine the books, records, and equipment of any interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/fueler, train operator, pipeline operator, vessel operator, or person dealing in, removing, transporting, or storing diesel fuel and may investigate the character of the disposition that the interstate user, supplier, exempt bus operator, government entity, ultimate vendor, qualified highway vehicle operator, highway vehicle operator/fueler, train operator, pipeline operator, vessel operator, or person makes of the diesel fuel in order to ascertain whether all taxes due under this part are being properly reported and paid.

History.—Stats. 1995, Ch. 34, in effect June 30, 1995, but operative July 1, 1995, added “government entity,” after “exempt bus operator.” Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “user” for “trucker” after “of any interstate” and after “that the interstate.” Stats. 2003, Ch. 605 (SB 1060), effective January 1, 2004, added “qualified” after “ultimate vendor,” “highway vehicle operator/refueler,” after “highway vehicle operator,” and “pipeline operator, vessel operator,” after “train operator.” Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, substituted “operator/fueler” for “operator/refueler” after “qualified highway vehicle operator, highway vehicle” throughout the text and deleted “operator” after the second reference to “operator/fueler, train operator.”

60607. Conferences as part of administrative duties. As this state is the source of petroleum products for other states, if the examination or investigation necessitates collaboration or conference with motor vehicle fuel tax officials of other states, at places inside or outside this state, the collaboration or conference is declared to be a necessary function in the administration of this part.

60608. Information sharing. (a) Upon request from the officials to whom is entrusted the enforcement of the motor fuel tax laws of another government, the board may furnish to those officials the information in the possession of the board that is deemed essential to the enforcement of the motor fuel tax laws.

Any information so furnished shall not be used for any purpose other than that for which it was furnished.

(b) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to motor fuels any

motor fuel information in the possession of the board that is deemed necessary for the enforcement of those laws.

(c) The board may furnish any interstate user information obtained by the board under this part to any state or federal agency for use by that agency in the enforcement of interstate user registration or licensing laws, or interstate vehicle registration or licensing laws.

History.—Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added subdivision designation “(a)”, substituted “laws” for “law” after “motor fuel tax” in the first paragraph of subdivision (a), and added subdivision (b). Stats. 1998, Ch. 609 (SB 2230), in effect January 1, 1999, added subdivision (c).

60609. Information confidential; divulging forbidden. It is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except to another government, state agency, or federal agency as specified in Section 60608. Information respecting the tax due from a person may be furnished, however, to any person owning or having an interest in a qualified motor vehicle or property subject to the lien of the tax. The Governor may, by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person of the records maintained by the board under this part. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public. Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties.

History.—Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, substituted “, state agency, or federal agency as specified,” for “as outlined” after “to another government” in the first sentence.

60609.5. Information confidential; tax preparer. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 6 (commencing with Section 60201), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution: (1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return. (2) Uses that information for any purpose other than to prepare, or assist in preparing, the return. (b) Subdivision (a) shall not apply to

disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

60610. Certificate of notice. A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

Article 2. The California Taxpayers' Bill of Rights

- § 60621. Administration.
- § 60622. Taxpayers' Rights Advocate.
- § 60623. Education and information program.
- § 60624. Annual hearing with taxpayers.
- § 60625. Preparation of statements by board.
- § 60626. Restriction on use of revenue collected or assessed information.
- § 60627. Evaluation of employee's contact with taxpayers.
- § 60628. Plan to timely resolve claims and petitions.
- § 60629. Procedures relating to protest hearings.
- § 60630. Reimbursement of fees and expenses.
- § 60631. Investigations for nontax administration purposes.
- § 60632. Release of levy.
- § 60632.1. Return of property.
- § 60633. Exemptions from levy.
- § 60633.1. Claim for reimbursement of bank charges by taxpayer.
- § 60333.2. Preliminary notice to taxpayers prior to lien.
- § 60634. Notice preliminary to revocation or suspension.
- § 60635. Disregard by board employee or officer.
- § 60636. Settlement authority.
- § 60637. Offers in compromise.

60621. Administration. The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

60622. Taxpayers' Rights Advocate. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

60623. Education and information program. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “and compliance” after “program for audit” in paragraph (4) of subdivision (b).

60624. Annual hearing with taxpayers. The board shall conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Diesel Fuel Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

60625. Preparation of statements by board. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

60626. Restriction on use of revenue collected or assessed information. (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

- (1) To evaluate individual officers or employees.
- (2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

60627. Evaluation of employee's contact with taxpayers. The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

60628. Plan to timely resolve claims and petitions. The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

60629. Procedures relating to protest hearings. Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

(b) The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

60630. Reimbursement of fees and expenses. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer shall be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) The board's proposed award under this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year . . . board becomes final” after “with the board” in paragraph (1) of, and substituted “in an amount . . . its sole discretion” for “which shall be determined by the board” after “to the hearing” in paragraph (3) of subdivision (a), substituted “board staff has . . . substantially justified” for “taxpayer has established that the position of the board staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, substituted “the notice of determination, jeopardy determination, or a claim” for “filing petitions for redetermination and claims” after “incurred after the date of” in subdivision (c) paragraph (1).

60631. Investigations for nontax administration purposes. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for non-tax-administration-related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include diesel fuel tax violations.

(e) For the purposes of this section:

(1) “Investigation” means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) “Surveillance” means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

60632. Release of levy. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part, or within 90 days from the receipt of the funds pursuant to a levy or notice to withhold may order the return of any amount to one thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse or dependents.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

History.—Stats. 1996, Ch. 1087, in effect January 1, 1997, added subdivision (b) and relettered former subdivisions (b) and (c) as (c) and (d), respectively.

60632.1. Return of property. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

- (1) The levy on the property was not in accordance with the law.
- (2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 60493 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.
- (3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 60633.1.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

60633. Exemptions from levy. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

60633.1. Claim for reimbursement of bank charges by taxpayer. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

- (1) The erroneous levy or notice to withhold was caused by board error.
- (2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information

or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 543 (SB 1185), in effect January 1, 2002, added “and any other reasonable third-party check charge fees” after “reimbursement of bank charges” in the first sentence of, added “and third party” after “Bank” and added “or third party’s” after “financial institution’s” in the second sentence of, and added “or third party” after “financial institution” in the third sentence of, subdivision (a).

60633.2. Preliminary notice to taxpayers prior to lien. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event the tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this action shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 60330) of Chapter 6.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

60634. Notice preliminary to revocation or suspension. For the purposes of this part only, the board shall not revoke or suspend a person's license pursuant to Section 60180 or 60181 unless the board has mailed a notice preliminary to revocation or suspension that indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

60635. Disregard by board employee or officer. (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

60636. Settlement authority. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 60609.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

History.—Added by Stats. 1995, Ch. 497, in effect January 1, 1996. Stats. 2003, Ch. 605 (SB 1060), effective January 1, 2004, added “, for at least one year,” after “there shall be placed on file” in the first sentence of subdivision (c). Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, substituted “Except as provided in paragraph (3) and subject” for “Subject” before “to paragraph (2)” in paragraph (1) of, added “,itself,” after “submitted to the board” in the first and third sentences of paragraph (2) of, and added paragraph (3) to subdivision (b); added “, or penalties, or total tax and penalties” after “a reduction of tax” in the first paragraph of and substituted “For any settlement approved by the board, itself, the” for “The” before “Attorney General’s conclusion” in the first sentence of paragraph (5) of subdivision (c); added “,itself,” after “disapproved by the board” in the second sentence of subdivision (e)(1); and added “considered or” after “any settlement” in the second sentence of subdivision (g).

Text of section in effect January 1, 2007 through December 31, 2012

60637. Offers in compromise. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability

in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 31 (commencing with Section 60001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a “qualified final tax liability” means any of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the supplier collected diesel fuel tax reimbursement from the purchaser or other person and which was determined by the board against the taxpayer under Article 2 (commencing with Section 60301), Article 3 (commencing with Section 60310), Article 5 (commencing with Section 60350), or Article 6 (commencing with Section 60360) of Chapter 6.

(B) A final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising under Article 6 (commencing with Section 60471) of Chapter 7.

(C) That part of a final tax liability for diesel fuel tax, including related interest, additions to tax, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 60301), Article 3 (commencing with Section 60310), Article 5 (commencing with Section 60350) and Article 6 (commencing with Section 60360) of Chapter 6 against an exempt bus operator, government entity, or qualified highway vehicle operator who used dyed diesel fuel on the highway.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement which permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that such installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file returns, whichever period is earlier.

(h) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

▲(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

▲(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

▲(l) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

▲(m) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

▲(n) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state. The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 60609. No list shall be prepared and no releases distributed by the board in connection with these statements.

▲(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(p) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(q) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007. Stats. 2008, Ch. 222 (AB 2047), in effect January 1, 2009, redesignated former subdivision (c) to be subdivision (c)(1); added paragraphs (2) and (3) to subdivision (c); added subdivisions (d)–(g); redesignated former subdivisions (d)–(m) to be (h)–(q); and added subdivision (r).

Text of section operative January 1, 2013

60637. Offers in compromise. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 31 (commencing with Section 60001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the taxpayer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive

only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the taxpayer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(i) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or

successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(j) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state. The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 60609. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(n) This section shall become operative on January 1, 2013.

History.—Added by Stats. 2008, Ch. 222 (AB 2047), in effect January 1, 2009, operative January 1, 2013.

CHAPTER 10. DISTRIBUTION OF PROCEEDS

- § 60651. Motor Vehicle Fuel Account transmittals.
- § 60652. Disposition of funds; Appropriation.
- § 60653. Transfer of funds to Highway Users Tax Fund.
- § 60654. Appropriation to board.

60651. Motor Vehicle Fuel Account transmittals. The board shall transmit all money received by it under this part, except the amounts of overpayment of the fees required by Section 60185, to the Treasurer to be deposited in the State Treasury to the credit of the Motor Vehicle Fuel Account in the Transportation Tax Fund. The board shall at the same time furnish copies of the schedules covering the transmittals to the Controller.

60652. Disposition of funds; appropriation. Notwithstanding Section 13340 of the Government Code, all moneys deposited in the account under this part are hereby continuously appropriated, without regard to fiscal years, as follows:

(a) To pay the refunds authorized in this part.

(b) The balance shall be transferred to the Highway Users Tax Account in the Transportation Tax Fund as provided in this chapter.

60653. Transfer of funds to Highway Users Tax Fund. The Controller shall make the transfers to the Highway Users Tax Account in the Transportation Tax Fund pursuant to Section 60652 at the same time as the transfers of moneys received under the Motor Vehicle Fuel Tax Law are made.

History.—Stats. 2007, Ch. 342 (AB 1748), in effect January 1, 2008, deleted “License” after “Motor Vehicle Fuel”.

60654. Appropriation to board. Any costs to the board to carry out any duties imposed upon it by this part shall be paid, upon appropriation by the Legislature, from the moneys deposited in the account under this part.

CHAPTER 11. VIOLATIONS

- § 60701. Penalty for fraudulent export statement.
- § 60702. Penalties.
- § 60703. Imported fuel.
- § 60704. False or fraudulent refund claim; penalty.
- § 60705. False or fraudulent return; intent to evade.
- § 60706. Other violations.
- § 60706.1. Additional fine.
- § 60707. Felony provisions.
- § 60707.1. Additional felony fine.
- § 60708. Limitation period.
- § 60709. Evasion penalty. [Repealed.]

60701. Penalty for fraudulent export statement. It is unlawful for any person, firm, association, or corporation, or any officer or agent thereof, through false statement, trick or device, or otherwise, to do any of the following:

(a) Obtain diesel fuel for export and fail to export it, or cause it not to be exported.

(b) Divert diesel fuel, or cause it to be diverted, from interstate or foreign transit begun in this state.

(c) Return diesel fuel to this state and sell or use it, or cause it to be used or sold in this state, without complying with the provisions of this part and without notifying the supplier from whom the diesel fuel was originally purchased of that act.

Any person violating any provision of this section is guilty of a misdemeanor punishable as provided in Section 60706.

Each shipment illegally diverted or illegally returned constitutes a separate offense. The unit of each shipment is the cargo of one vessel, one railroad car load, one automobile truck load, one truck and trailer load, one drum, one case, or one can.

60702. Penalties. It is unlawful for any supplier or other person to conspire with any person, firm, association, or corporation, or any officer or agent thereof, to withhold diesel fuel from export, or to divert it from interstate or foreign transit begun in this state, or to return it to this state for sale or use so as to avoid any of the taxes imposed by this part.

Each shipment illegally diverted or illegally returned constitutes a separate offense. The unit of each shipment is the cargo of one vessel, one railroad car load, one automobile truck load, one truck and trailer load, one drum, one barrel, one case, or one can.

Any person violating any provision of this section is guilty of a misdemeanor punishable as provided in Section 60706.

60703. Imported fuel. Any person who acquires diesel fuel outside this state and uses the diesel fuel for the operation of a qualified motor vehicle within and without this state or the United States, is guilty of a misdemeanor punishable as provided in Section 60706 unless that person is an interstate user who holds a valid diesel fuel tax license or diesel fuel trip permit as defined in Sections 60120 and 60122.

History.—Stats 1995, Ch. 555, in effect January 1, 1996, substituted “user” for “trucker” after “is an interstate”.

60704. False or fraudulent refund claim; penalty. Any person who makes, issues or signs a false or fraudulent claim for refund under this part is guilty of a misdemeanor punishable as provided in Section 60706.

60705. False or fraudulent return; intent to evade. (a) Any person required to make, render, sign, or verify any return or report who makes any false or fraudulent return or report with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor punishable as provided in Section 60706.

(b) Any person who willfully aids or assists in, or procures, counsels, or advises in the preparation or presentation under, or in connection with any matter arising under this part, of a return, affidavit, claim, or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document is guilty of a misdemeanor punishable as provided in Section 60706.

60706. Other violations. Any violation of this part, except as otherwise provided, is a misdemeanor. Each offense shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding six months, or by both fine and imprisonment in the discretion of the court.

60706.1. Additional fine. In addition to the fine or imprisonment, or both, each person convicted under Section 60706 shall pay, in the court's discretion, up to two dollars (\$2) for each gallon of diesel fuel, or portion thereof, knowingly removed, entered, blended, or delivered into a fuel tank, or possessed, kept, stored, or retained for the purpose of removal or removed, or offered for removal, or entry, or entered, or for sale, or actually sold, or offered for sale, or for the purpose of use, or actually used, or for the purpose of delivery into a fuel tank, or actually delivered into a fuel tank, or offered for delivery into a fuel tank, in violation of Section 60706, as determined by the court. Proceeds of the assessed penalty shall be distributed to the treasurer of the county in which the action was brought. After reimbursing the prosecuting agency for its costs of prosecution, and after deducting the county's reasonable costs of administration, the remaining proceeds shall be distributed to the Motor Vehicle Fuel Account in the Transportation Tax Fund. Funds distributed pursuant to this section to the Motor Vehicle Fuel Account shall be available, upon appropriation by the Legislature, to pay administrative costs of the board to enforce this part.

History.—Added by Stats. 1994, Ch. 975, operative July 1, 1995. Stats. 1996, Ch. 124, in effect January 1, 1997, added "or offered for delivery into a fuel tank," before "in violation of" in the first sentence and substituted "the county's" for "its" after "and after deducting" in the last sentence.

60707. Felony provisions. Notwithstanding any other provision of this part, any person who willfully evades or attempts in any manner to evade or defeat the payment of the tax imposed by this part is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars (\$25,000) or more in any 12-consecutive-month period. Each offense shall be punished by a fine of not less than five thousand dollars (\$5,000) and not more than twenty thousand dollars (\$20,000), or imprisonment for 16 months, or two, or three years, or both the fine and imprisonment in the discretion of the court.

60707.1. Additional felony fine. In addition to the fine or imprisonment, or both, each person convicted under Section 60707 shall pay, in the court's discretion, up to two dollars (\$2) for each gallon of diesel fuel, or portion thereof, knowingly removed, entered, blended, or delivered into a

fuel tank, or possessed, kept, stored, or retained for the purpose of removal or removed, or offered for removal, or entry, or entered, or for the purposes of sale, or actually sold, or offered for sale, or for the purpose of use, or actually used, or delivery into a fuel tank, or delivered into a fuel tank, or offered for delivery into a fuel tank, in violation of Section 60707, as determined by the court. Proceeds of the assessed penalty shall be distributed to the treasurer of the county in which the action was brought. After reimbursing the prosecuting agency for its costs of prosecution, and after deducting the county's reasonable costs of administration, the remaining proceeds shall be distributed to the Motor Vehicle Fuel Account in the Transportation Tax Fund. Funds distributed pursuant to this section to the Motor Vehicle Fuel Account shall be available, upon appropriation by the Legislature, to pay administrative costs of the board to enforce this part.

History.—Added by Stats. 1994, Ch. 975, operative July 1, 1995. Stats. 1996, Ch. 124, in effect January 1, 1997, substituted “the county’s” for “its” after “and after deducting” in the third sentence.

60708. Limitation period. Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense, or within two years after the violation is discovered, whichever is later.

60709. Evasion penalty. [Repealed by Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998.]

Uncodified Section

§ 1. Further analysis by Board.

1. Further analysis by Board. For purposes of Part 31 (commencing with Section 60001) of Division 2 of the Revenue and Taxation Code, the State Board of Equalization shall do both of the following:

(a) Conduct an analysis of the use of clear diesel fuel acquired by exempt users and without tax (such as by farmers and school bus operators) and report to the Legislature by October 1, 1996, on the extent to which clear diesel fuel acquired with a tax exemption is used for nonexempt purposes.

(b) Evaluate the administrative costs and potential revenue impacts of making the use of other fuels, such as kerosene and transmix, in an internal combustion engine for the generation of power to propel a motor vehicle on the highways, subject to Part 31 (commencing with Section 60001), and report its findings to the Legislature by January 1, 1996.

6704
2009-1

DIESEL FUEL TAX LAW

FUEL TAX AGREEMENTS

(Part 3.5, Division 2, Revenue and Taxation Code)

(As added by Stats. 1989, Ch. 411, in effect January 1, 1990.)

- Chapter 1. Fuel Tax Agreements. § 9401
2. The International Fuel Tax Agreement. §§ 9405–9433

CHAPTER 1. FUEL TAX AGREEMENTS

§ 9401. Authorization.

9401. **Authorization.** The board, with the approval of the Department of Finance, may on behalf of the state become a party to a reciprocal fuel tax agreement between this state and another jurisdiction, or an agency thereof that is authorized to enter into an agreement, providing for the administration, collection, and enforcement by a party to the agreement of the taxes imposed upon motor fuels by another jurisdiction, and for the forwarding of collections to the jurisdiction on behalf of which the tax was collected.

For purposes of this section, “taxes imposed upon motor fuels” means the taxes imposed by this state pursuant to Part 3 (commencing with Section 8601) or Part 31 (commencing with Section 60001), and taxes of a similar nature imposed upon any motor fuels by another jurisdiction under its laws.

For purposes of this section, a “jurisdiction” is this state, any other state, the District of Columbia, a province or territory of Canada, or any governmental entity, which is a party to a reciprocal fuel tax agreement authorized by this section.

The board may adopt and enforce regulations necessary to implement the terms of a reciprocal fuel tax agreement to which the board is a party.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “that” for “which” after “an agency thereof”, deleted “such” after “to enter into”, deleted “fuel” after “agreement of the”, and added “upon motor fuels” after “the taxes imposed”, in the first paragraph; substituted “taxes imposed upon motor fuels” for “fuel taxes”, substituted “taxes” for “tax” after “means the”, substituted “3 (commencing with ... Section 60001)” for “2 (commencing with Section 7301) or Part 3 (commencing with Section 8601)” after “pursuant to Part”, and substituted “upon any motor ... under its laws” for “by another jurisdiction” after “similar nature imposed”, in the second paragraph; and deleted “or” after “District of Columbia” and added “or any governmental entity,” after “territory of Canada,” in the third paragraph.

CHAPTER 2. THE INTERNATIONAL FUEL TAX AGREEMENT *

- Article 1. Construction. §§ 9405–9407.
2. Definitions. §§ 9410–9411.
3. Annual Fees. § 9420.
4. Administration. § 9425.
5. IFTA Disclosure. § 9430.
6. Distribution of Proceeds. §§ 9432–9433.

Article 1. Construction

- § 9405. Construction.
§ 9407. Limits of authority.

9405. **Construction.** This chapter shall be administered in conjunction with the IFTA, the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), and the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001)). Whenever the Use Fuel Tax Law or the Diesel Fuel Tax Law is

* Added by Stats. 1995, Ch. 555, in effect January 1, 1996.

inconsistent with the IFTA or this chapter, the IFTA or this chapter shall prevail except where prohibited by the California Constitution or United States Constitution.

History.—Stats. 2004, Ch. 183 (AB 3082) in effect January 1, 2005, added “Section” after “(Part 31 (commencing with” in the first sentence, and added “Constitution” after “by the California” in the second sentence. Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, deleted “Articles of Agreement” after “IFTA” throughout section.

9407. Limits of authority. (a) The IFTA, for the purposes of this chapter, may be used to:

(1) Determine the base state jurisdiction for motor carriers engaged in interstate commerce.

(2) Impose recordkeeping requirements.

(3) Specify audit procedures.

(4) Establish procedures for the exchange of information.

(5) Identify interstate motor carriers.

(6) Define motor vehicles and fuels subject to the provisions of the agreement.

(7) Determine bond requirements.

(8) Specify reporting requirements, due dates of returns, interest and penalty rates, and provisions for failure to file returns.

(9) Specify methods for collection of taxes, interest, and penalties.

(10) Determine methods for the distribution of taxes and interest collected or assessed to the appropriate jurisdictions.

(11) Deny, suspend, or cancel benefits under the agreement to any interstate motor carrier who violates the provisions of the agreement.

(b) The board may adopt regulations to administer the provisions of this chapter.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, substituted “IFTA” for “International Fuel Tax Agreement” after “The” in subdivision (a).

Article 2. Definitions

§ 9410. “Contractor.”

§ 9411. “IFTA.”

9410. “Contractor.” “Contractor” includes a subcontractor.

9411. “IFTA.” “IFTA” means the International Fuel Tax Agreement. The International Fuel Tax Agreement consists of the Articles of Agreement, the Procedures Manual, the Audit Manual, as amended from time to time.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, added the second sentence which provided “The International Fuel Tax Agreement consists of the Articles of Agreement, the Procedures Manual, the Audit Manual, as amended from time to time.”

Article 3. Annual Fees

§ 9420. License and fee.

9420. License and fee. Except for trip permits as provided in Sections 8708 and 60122, all interstate users who choose to obtain an IFTA license from the board shall apply for a license and secure decals for their vehicles. Application for the license and decals shall be made annually on forms prescribed by the board. The application shall be under oath and shall contain

that information as the board deems necessary. Upon receipt of the application, and upon payment of any required reinstatement fee, the board may issue to the applicant a license and decals.

The decals issued to the interstate user shall be placed on both exterior sides of the vehicle cab. Failure to display the decals in the required location may subject the interstate user to the purchase of a trip permit. The transfer of decals from one interstate user to another interstate user is prohibited. All decals shall remain the property of the state and may be recalled for any violation of the provisions of the IFTA.

A fee to be determined by the board shall be charged for the annual license and a set of two decals issued prior to and during the calendar year that the license and decal is valid. The board may also prescribe procedures and set a fee for the issuance of a 30-day IFTA temporary license or replacement decals.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, substituted “license” for “permit” after “who choose to obtain an IFTA” in the first sentence of the first paragraph and deleted “Articles of Agreement” after “violation of the provisions of the IFTA” in the last sentence of the second paragraph.

Article 4. Administration

§ 9425. Returns and refunds.

9425. Returns and refunds. The exemptions in Chapter 2 (commencing with Section 8651) of Part 3 do not apply to IFTA-required returns. However, the exempt use shall be refunded under the refund provisions in Chapter 6 (commencing with Section 9151) of Part 3.

Article 5. IFTA Disclosure

§ 9430. Release of information.

9430. Release of information. (a) The board shall make available any and all information obtained under this chapter to any member jurisdiction of the IFTA, a designee of the member jurisdiction, or any contractor under contract with the board. The information obtained by the member jurisdiction, designee, or contractor shall not be made public except to the extent authorized by the agreement.

(b) The member jurisdictions of the IFTA and the board may utilize any information obtained pursuant to this chapter to develop data on international or interstate commerce, fuel consumption, and any aspect of motor fuel tax administration.

Article 6. Distribution of Proceeds

§ 9432. Distribution of funds.

§ 9433. Uses of funds.

9432. Distribution of funds. The board shall transmit all moneys received by it under this chapter to the Treasurer to be deposited in the State Treasury. The board in accordance with the Treasurer shall set up a reserve account in the State Treasury to disburse those moneys as needed. After distribution payments to other jurisdictions and refunds authorized by the

IFTA, the balance remaining in the reserve account shall be transferred, except as provided in Section 9433, to the Motor Vehicle Fuel Account in the Transportation Tax Fund

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, deleted “Articles of Agreement” after “refunds authorized by the IFTA” in the third sentence.

9433. **Uses of funds.** The fees paid for licenses and decals issued under Section 9420 shall be deposited in a reserve account in the State Treasury and shall, upon appropriation by the Legislature, be used for administration of the IFTA program.

INDEX

A

Actions

- refunds, for, and to recover erroneous, see refund and credit of overpayments.
- delinquency, certificate of, as prima facie evidence in . . . 60423

Administration by Board of Equalization

- Board, enforcement by . . . 60601
- confidential information, prohibition against disclosure, see confidential information
- employees, hiring of . . . 60602
- records, examination of . . . 60604
- rules and regulations . . . 60601

Advocate, Taxpayers' Rights . . . 60622

"Approved" defined . . . 60005

Attachment, in action for tax . . . 60422

Auction,

- seized property, sale by Board at public auction . . . 60461
- qualified motor vehicle . . . 60462.5

B

Bank charges, claim for reimbursement by taxpayer . . . 60633.1

"Blended diesel fuel" defined . . . 60023

"Blender"

- defined . . . 60012
- liability . . . 60055
- "Bulk transfer" defined . . . 60029

"Bulk transfer/terminal system" defined . . . 60030

C

California Taxpayers' Bill of Rights . . . 60621–60635

Cancellation of liability . . . 60581

Certificates

- amount due, recording or filing of notice of state tax lien . . . 60445
- delinquency, certificate of, as prima facie evidence in suit for tax . . . 60423
- state tax lien, recording or filing of notice of . . . 60445
- successor liability . . . 60471, 60472

Claim for refund or credit, see refund and credit of overpayments

Collection

- injunction against, prohibited . . . 60541
- lien of tax . . . 60441–60445
- remedies, cumulative . . . 60491
- security for . . . 60401
- seizure and sale for
 - authority of board . . . 60461
 - procedure . . . 60462–60464
 - successor withholding and liability . . . 60471–60474
- suit for
 - attachment . . . 60422
 - authority to bring . . . 60421
- warrant for
 - expenses, payment and collection . . . 60452, 60453
 - issuance and levy . . . 60451

Collections, disposition of . . . 60651–60654

Confidential information disclosed; tax preparer . . . 60609.5

"Colorless marker" defined . . . 60024

Credit (see also refund and credit of overpayments)

- action to recover erroneous . . . 60561

D

Deficiency determination, see determination: deficiency

Definitions . . . 60003–60049.1, 60111–60114

Delay, excusable . . . 60209, 60210

"Delivery" defined . . . 60025

Determinations: deficiency

- cancellation of . . . 60581
- due and payable, when . . . 60355
- final, when, if no petition filed . . . 60350

D (Contd.)

interest . . .	60314
notice of . . .	60311
limitations-time for mailing notice . . .	60315
decedent, against person liable for tax of . . .	60316
waiver of . . .	60317
number allowable . . .	60310
offsetting overpayments against underpayments . . .	60356
penalties	
failure to file return . . .	60207
negligence or intentional disregard . . .	60312
nonpayment . . .	60207
fraud or intent to evade . . .	60313
Determinations: no return made	
cancellation of . . .	60581
due and payable, when . . .	60355
estimate of tax measure . . .	60301
final, when no petition filed . . .	60350
interest . . .	60302
notice of . . .	60304
limitations-time for mailing notice . . .	60315
number allowable . . .	60301
offsetting overpayments against underpayments . . .	60356
penalties	
failure to file return . . .	60207
fraud or intent to evade . . .	60313
nonpayment . . .	60207
Determinations: jeopardy	
administrative hearing . . .	60333
due date . . .	60330
interest and penalty . . .	60331
notice of . . .	60340
petition for redetermination . . .	60332
security . . .	60332
Determinations: petition for redetermination	
amendment of petition . . .	60351
form and content of petition . . .	60351
hearing on petition . . .	60352
continuance of hearing . . .	60352
notice of hearing . . .	60352
increase or decrease before determination final . . .	60353
order or decision on petition, when final-notice . . .	60354
penalty for nonpayment when final . . .	60355
persons entitled to file petition . . .	60350
“Diesel fuel” defined . . .	60022
“Diesel fuel registrant” defined . . .	60015
“Diesel fuel trip permit” defined . . .	60122
“Diesel-powered highway vehicle” defined . . .	60026
“Diesel-powered train” defined . . .	60042
“Diesel vendor” defined . . .	60114
Due date of tax	
Backup tax . . .	60206
Exempt bus operator . . .	60205
Floor stock tax . . .	60201.5
Government entity . . .	60205.5
Interstate user . . .	60202
Supplier . . .	60201
“Dyed diesel fuel”	
defined . . .	60031
exemption . . .	60101
notice . . .	60102

E

Earnings withheld by employer . . .	60408
Electronic funds transfer . . .	60250
Definitions . . .	60251
relief of penalty . . .	60252
Electronic filing . . .	60253

E (Contd.)

Employee, hiring by Board . . . 60602
 “End seller” defined . . . 60034
 “Enterer”
 defined . . . 60013
 liability . . . 60061
 “Entry” defined . . . 60021
 “Exempt bus operator”
 defined . . . 60040
 license . . . 60141
 exemption . . . 60100
 security requirement . . . 60143
 tax . . . 60502.2
 Exemption certificates
 misuse of . . . 60106.3
 purchaser liability . . . 60106.2
 train operator . . . 60106.1
 Exemptions . . . 60100
 dyed fuel . . . 60101
 exempt bus operator . . . 60100
 farm use . . . 60100
 out-of-state shipment . . . 60100
 United States train operator . . . 60106
 Extension of time for making return or payment . . . 60208

F

Felony . . . 60707
 Fraud
 penalty . . . 60313
Fuel production facility . . . 60003.1

G

“Gallon” defined . . . 60025
 “Government entity”
 credits . . . 60508.3
 defined . . . 60043
 license . . . 60146
 payment . . . 60108
 return . . . 60205.5

H

Hearings (see also determinations: petition for redetermination)
 application for (jeopardy determination) . . . 60333
 “Highway” defined . . . 60016
 “Highway vehicle operator”
 defined . . . 60027
 liability . . . 60056
 license . . . 60161
 security requirement . . . 60163

I

Imposition of tax, 60050-60052, 60115, 60502.2
 Innocent spouse, relief for . . . 60210.5
 Installation payment agreement . . . 60493
 payment agreement . . . 60493.5
 Intent to evade . . . 60313
 Interest
 determinations: deficiency . . . 60314
 failure to file . . . 60302
 jeopardy . . . 60331
 extension of time . . . 60208
 rate . . . 60207
 refunds, see refund and credit of overpayments
 relief from . . . 60210, 60211, 60212
 International Fuel Tax Agreement . . . 60130
 “Interstate user”
 defined . . . 60111
 license . . . 60120
 security requirement . . . 60121
 “In this state” defined . . . 60017

J

Jeopardy determinations, see determinations: jeopardy
Judgment for tax
 actions to collect tax, see actions
 lien, perfection of . . . 60445
 lien, release of . . . 60443
Judicial proceedings, see actions
Jurisdiction
 erroneous refund, action to recover . . . 60561
 tax action for . . . 60421

L

Levy
 exemptions, Taxpayers' Bill of Rights . . . 60633
 release of, Taxpayers' Bill of Rights . . . 60632
License
 cancellation . . . 60183
 denial . . . 60171
 hearing . . . 60172
 notice of . . . 60173
 end seller . . . 60161
 government entity exempt bus operator . . . 60141
 highway vehicle operator . . . 60161
 interstate user . . . 60120
 pipeline operator . . . 60135
 revocation . . . 60180
 cause . . . 60181
 notice of . . . 60182
 reinstatement . . . 60185
 supplier . . . 60131
 ultimate vendor . . . 60151
Liens
 perfection and enforceability of . . . 60445
 tax lien of
 certificate of liability, recordation of, as creating lien for
 amount due . . . 60445
 duration and extension of. . . . 60451
 effect and priority of . . . 60451
 time for filing . . . 60451
 warrant for enforcement of liens . . . 60451
Limitations, statutes of
 determinations
 asserting increase . . . 60353
 decedents . . . 60316
 deficiency . . . 60315
 mailing notice . . . 60311
 notice to creditor . . . 60402
 refund or credit
 action for refund . . . 60543
 claim for . . . 60507
 overpayments from levies or liens . . . 60522.2
 violations of provisions . . . 60708
 warrant for tax . . . 60451

M

Misdemeanor (see also penalties)
 claim for refund . . . 60704
 making false or fraudulent. . . 60705
 violation of law as . . . 60706
"Motor vehicle" defined . . . 60019

N

Negligence penalty . . . 60303, 60312
Notices
 determinations, certificate of . . . 60610
 lien . . . 60633.2
 refunds, action on claims for . . . 60543
 security, notice of sale . . . 60402

N (Contd.)

seized property, notice of sale of . . . 60462
 successor liability . . . 60474

O

Offers in compromise . . .60637

P

Penalties

determinations nonpayment . . . 60355
 negligence . . . 60303, 60312
 failure to file return . . . 60207
 intent to evade . . . 60313
 jeopardy determinations . . . 60331
 relief from, for reasonable cause . . . 60209
 relief from, for reliance on Board advice . . . 60210
 tax payments, delinquent . . . 60207
 "Person" defined . . . 60008
 "Pipeline" defined . . . 60047
 "Pipeline operator"
 defined . . . 60047.1
 license . . . 60135
 report . . . 60204.5
 "Position holder" defined . . . 60010
 Presumption of removal . . . 60064
 Property, return of . . . 60632.1

Q

"Qualified motor vehicle" defined . . . 60112

R

"Rack" defined . . . 60006
 Rate of tax . . . 60050
 Floor stock tax . . . 60050.1
 Exempt bus operator . . . 60502.2
 Records . . . 60604, 60605
 "Recreational vehicle" defined . . . 60113
 Redeterminations, see Determinations: petitions for redeterminations
 "Refiner"
 defined . . . 60011
 liability . . . 60053
 "Refinery" defined . . . 60004
 Refund and credit of overpayments
 action to recover
 assignee not entitled to judgment . . . 60548
 claim for refund, necessity for . . . 60542
 disposition of judgment . . . 60546
 grounds, limitation to those set forth in claim . . . 60543
 interest in judgment . . . 60547
 jurisdiction . . . 60543
 person entitled to bring . . . 60543, 60548
 time to bring . . . 60543
 failure of Board to act on refund claim . . . 60544
 waiver, failure to bring timely action as . . . 60545
 authority of Board . . . 60521
 claim
 financially disabled . . . 60522.1
 time to file . . . 60522
 form and content . . . 60523
 payment deadline for Board . . . 60512
 electronic media . . . 60505.5
 erroneous refunds and credits, action to recover . . . 60561
 interest
 amount and period covered . . . 60524
 disallowance for intentional or careless overpayment . . . 60525
 persons entitled to receive refunds or credits . . . 60521
 "Registered ultimate vendor" defined . . . 60038
 Relief for innocent spouse . . . 60210.5

R (Contd.)

Relief of tax, interest, and penalty . . . 60210
Remedies for collection cumulative . . . 60491
“Removal” defined . . . 60007
Removal, presumption . . . 60064
Reports
 pipeline operator . . . 60204.5
 train operator . . . 60204.6
 vessel operator . . . 60204.5
“Retail vendor” defined . . . 60044
Returns
 due date and contents . . . 60201–60206
 extension of time . . . 60208
 failure to file, see Determination: no return made
Rules and regulations
 authority of Board to adopt and enforce . . . 60601

S

“Sale” defined . . . 60048
Security for tax
 authority to require . . . 60401
 jeopardy determinations . . . 60332
 sale of . . . 60406
 disposition of surplus . . . 60407
 notice of . . . 60402
Seizure and sale
 authority for . . . 60461
 bill of sale . . . 60463
 deed . . . 60463
 disposition of proceeds . . . 60464
 notice of sale . . . 60462, 60462.6
Settlement authority . . . 60636
Spouse, innocent . . . 60210.5
Statute of limitations, see Limitations, Statutes of
“Supplier”
 defined . . . 60033
 license . . . 60131
 security requirement . . . 60133
 worthless accounts . . . 60201.3

T

Tax
 due date . . . 60201–60206
 exemptions . . . 60100, 60101, 60106
 liability
 blender . . . 60055
 end seller . . . 60057
 enterer . . . 60061
 government entity . . . 60108
 highway vehicle operator . . . 60056
 position holder . . . 60054
 refiner . . . 60053
 terminal operator . . . 60059, 60062
 rate . . . 60050, 60050.1, 60502.2
 refunds . . . 60501
 see also Refund and credit of overpayment
 “Tax-paid fuel” defined . . . 60048.1
Taxpayers’ Bill of Rights . . . 60621–60635
 claims for refund, plan to resolve . . . 60628
 evaluation of employees . . . 60627
 levy . . . 60632, 60633
 petitions, plan to resolve . . . 60628
 preparation of statements by Board . . . 60625
 protest hearings . . . 60629
 reimbursements . . . 60630
 revenue collected or assessed . . . 60626
Taxpayers’ Rights Advocate . . . 60622
Title of law . . . 60001

T (Contd.)

“Terminal” defined . . . 60003
“Terminal operator”
 defined . . . 60009
 liability . . . 60059
“Throughputter” defined . . . 60035
Train operator
 defined . . . 60041
 exemption . . . 60106
 exemption certificate . . . 60106.1
 report, delivery . . . 60204.6
 report, purchasing . . . 60107
Two-party exchange . . . 60063

U

“Ultimate purchaser” defined . . . 60037
“Ultimate vendor”
 defined . . . 60036
 license . . . 60151
“Undyed diesel fuel” defined . . . 60032
Unlicensed persons
 backup tax . . . 60361.5
 immediate liability . . . 60360
 penalty . . . 60361
 seizure and sale of property . . . 60362

V

“Vessel” defined . . . 60049
“Vessel operator”
 defined . . . 60049.1
 report . . . 60204.5
Violations (see also misdemeanor; felony)
 Two-party exchange . . . 7372
 as felony . . . 60707
 statute of limitations . . . 60708

W

Waiver
 claim for refund . . . 60507
 determination, time for mailing notice of . . . 60317
 timely action for refund, failure to bring as . . . 60545
Warrant for collection
 authority to issue . . . 60451
 effect of . . . 60451
 fee and expenses collection from party liable for tax . . . 60452
 officer levying . . . 60451
 publication, approval of . . . 60452
 levy, manner of . . . 60451
 sale pursuant to . . . 60451
 time to issue . . . 60451
 worthless accounts, suppliers . . . 60205.5
Withholds; Earnings . . . 60408

6716
2009-1

DIESEL FUEL TAX LAW

TABLE OF CASES

Section

A	
B	
C	
Cool Fuel, Inc., (2004) 117 Fed. Appx. 514, unpublished	60421
D	
E	
F	
G	
H	
I	
J	
K	
Kansas Dept. of Revenue, Wagon, Sect. v. Prairie Band Potawatomi Nation, (2005) 546 U.S. ____	60051
L	
M	
N	
O	
P	
Potawatomi Nation, Prairie Band; Wagon v., (2005) 546 U.S. ____	60051
Prairie Band Potawatomi Nation; Wagon v., (2005) 546 U.S. ____	60051
Q	
R	
S	
T	
U	
V	
W	
Wagon v. Prairie Band Potawatomi Nation, (2005) 546 U.S. ____	60051
X	
Y	
Z	

6718
2009-1

DIESEL FUEL TAX LAW